

SV0003 2732054

PP HQ

DE SV

P 292045Z SEP 80

FM SAVANNAH (166-1491)

TO DIRECTOR PRIORITY

BT

UNCLAS

RECEIVED
LETTER UNIT

29 SEP 80 20 56z

Exec AD Adm.	
Exec AD Inv.	
Exec AD Leg.	
Asst. Dir.:	
Adm. Serv.	
Crim. Inv.	
Ident.	
Insp.	
Laboratory	
Legal Coun.	
Plan. & Insp.	
Rec. Mgmt.	
Tech. Serv.	
Training	
Off. of Cong. & Public Affs.	
Telephone Rm.	
Director's Sec'y	

SURREPTITIOUS ENTRY INVESTIGATION SPECIAL, 1976.

ON SEPTEMBER 29, 1980, FRANK MARTIN, U. S. DEPARTMENT OF JUSTICE, WASHINGTON, D. C., TELEPHONICALLY ADVISED SA ROBERT E. CONRAD OF THE AUGUSTA, GA., RA THAT CONRAD WAS TO REPORT TO WASHINGTON, D. C., TO APPEAR IN TRIAL OF FORMER BUREAU OFFICIALS ON SEPTEMBER 30, 1980.

UACB, CONRAD WILL DEPART RA AFTERNOON SEPTEMBER 29, 1980, AND SHOULD RETURN WHEN TESTIMONY IS COMPLETED.

BT

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-11-2009 BY 65179 dmh/baw/sbs

62-118045-298

23 NOV 3 1980

4-SIR
Mr. [unclear]
Room 4889
TL# 224

62-118045

64 NOV 14 1980

Greenberg/Gray-7351

~~SECRET~~

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION**Memorandum**~~CONFIDENTIAL~~

TO : Director, FBI ()

DATE: 9/22/80

FROM : Legal Attache, London (200-62) (P)

SUBJECT: U. S. W. O vs. MARK FELT; ET AL
FOREIGN SOURCE INFORMATIONEXEMPTED FROM AUTOMATIC
DECLASSIFICATION
AUTHORITY DERIVED FROM:
FBI AUTOMATIC DECLASSIFICATION GUIDE
EXEMPTION CODE 25X(1,6)
DATE 05-11-2009

Reference: Butel to all Legats 9/17/80.

Dissemination, as outlined below, was made on dates indicated.

☐ _____ copies ofALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE☒ Pertinent information from retel - security matter.

Name and Location of Agency	Date Furnished
(S) [redacted] (S)	(S) b1 9/22/80

62-118045-

~~CONFIDENTIAL~~3 - Bureau
(1 - Foreign Liaison Desk)

Classified and Extended by...6159...

Reason for Extension:

FCIM, II, 1-2.4.2... (1)(2)...

Date of Review for Declassification:

9/22/2010

574
66 NOV 14 1980

62-118045

J. P. [signature]
11221~~SECRET~~

Greenberg/Gray-7352

FBI/DOJ

~~CONFIDENTIAL~~

RECEIVED
TELETYPE UNIT

16 OCT 80 03 06z

RECEIVED
FEDERAL BUREAU
OF INVESTIGATION
COMMUNICATIONS SECTION

CG0013 2900219

PR HQ SL

DE CG

R 0160219Z OCT 80

FM CHICAGO (100-41353) (SQUAD 12)

TO DIRECTOR (100-442715) ROUTINE

ST. LOUIS ROUTINE

BT

~~SECRET~~

ATTENTION INTD

ACHEMY, U.S. VS. W. MARK FELT, ET AL; TRIAL DAMAGE-SOURCE
PROTECTION (S).

RE CHICAGO TELETYPE DATED OCTOBER 8, 1980.

(C)

[REDACTED]

b1
b2
b6
b7C
b7D

[REDACTED] PLANS TO MEET SOURCE OCTOBER 18 OR 19, 1980.

BUREAU AND ST. LOUIS WILL BE ADVISED OF SPECIFIC ARRANGEMENTS
MADE TO MEET SOURCE WHEN THEY ARE COMPLETED. ~~(X)~~

~~C AND E 5068, REASON 2 AND 3, DRD OCTOBER 15, 1980.~~

BT

Greenberg/Gray-7353

59 NOV 19 1980

~~CONFIDENTIAL~~

NOT RECORDED

25 NOV 7 1980

ORIGINAL FILED IN 100-442715-3119

Memorandum



Exec AD Inv. _____
Exec AD Adm. _____
Exec AD LES _____
Asst. Dir.:
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

To : Mr. McKinnon *cm/10/80*

Date 9/3/80

From : J. L. Williamson *jlw/10/80*

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-11-2009 BY 65179 dmh/baw/sbs

Subject : REQUEST FOR COPY OF
EBL HANDBOOK BY
SPECIAL COUNSEL,
U. S. DEPARTMENT OF JUSTICE

W. MARK FELT

PURPOSE: To detail information requested by Special Counsel Nields, Department of Justice.

DETAILS: On 9/2/80 Special Counsel John Nields, Department of Justice, handling the matter of the USA vs Felt and Miller was in telephonic contact with SA [REDACTED] PRA Unit. Nields stated that he wanted a complete copy of the Agent's handbook as it appeared in September, 1972, with all the revisions published through May, 1973. Nields stated that the trial in this matter is scheduled to commence 9/15/80 and that he would like the material by 9/10/80. Nields advised that he probably should have let Administrative Services Division know of his specific needs prior to this date.

b6
b7C

On 9/3/80, John Nields and Dan Friedman (phonetic) attended a meeting with SA [REDACTED] in Room 6856, JEH, and requested the following be provided to them by 9/12/80:

b6
b7C

One copy of each page of the Handbook for Special Agents as it appeared on 9/1/72, and all revisions from 9/1/72 through May, 1973, in Xerox form which can be cut and punched to be put in a 3-ring binder.

RECOMMENDATION: That this material be prepared and provided as requested, and that this memorandum be retained for possible future reference.

1 - [REDACTED] b6
1 - [REDACTED] b7C

JSS:amo (3)

APPROVED:

Director _____
Exec. AD-Adm. _____
Exec. AD-Inv. _____
Exec. AD-LES _____

Adm. Serv. _____

Crim. Inv. _____

Ident. _____

Intell. _____

Laboratory _____

Legal Coun. _____

Plan. & Insp. _____

Rec. Mgnt. _____

Tech. Servs. _____

Training _____

Off. of Cong. & Public Affs. _____

NOV 4 1980

59 NOV 20 1980

Greenberg/Gray-7354

PERS. REC. UNIT

FBI/DOJ

~~CONFIDENTIAL~~

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Memorandum

~~CONFIDENTIAL~~

TO : Mr. Colwell

EXEMPTED FROM AUTOMATIC
DECLASSIFICATION
AUTHORITY DERIVED FROM:
FBI AUTOMATIC DECLASSIFICATION GUIDE
EXEMPTION CODE 25X(1)
DATE 05-11-2009

FROM : R.P. Finzel

1 - Mr. Colwell
1 - Mr. Mullen
DATE: 9/9/80
1 - Mr. Mintz
1 - Mr. O'Malley
1 - Mr. Revell
1 - Mr. Finzel
1 - Mr. Steel
1 - Mr. Daly
1 - Mr. Tierney

SUBJECT: U.S. VS. W. MARK FELT, ET AL.
TRIAL PREPARATION (U)

Exec AD Inv. _____
Exec AD Adm. _____
Exec AD LES _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

PURPOSE:

To record 9/8/80 meeting with the Director, and action taken. (U)

RECOMMENDATION:

None. For information and record purposes. (U)

APPROVED: _____
Director _____
Exec. AD-Adm. OK
Exec. AD-Inv. _____
Exec. AD-LES _____
Adm. Serv. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. RTK
Tech. Servs. _____
Training _____
Off. of Cong. & Public Affs. _____

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

DETAILS:

On 9/8/80 the Director met with EAD Mullen, ADs Mintz, O'Malley, and Finzel, Special Assistant Steel, ASAC Paul V. Daly and SA Joseph L. Tierney. The meeting was held to discuss the Attorney General's letter to the President of 8/29/80, copies of which were furnished to the Departments of State and Defense and to CIA for respective comments, but not to the FBI. The Attorney General was to furnish the Director a copy together with the responses of other agencies that day, but it had not been delivered yet. (U)

(C)

b1

Several questions regarding the precision and accuracy of statements in the Attorney General's letter were discussed. (U)

AD O'Malley, ASAC Daly and SA Tierney had had the opportunity to review a copy of the Attorney General's letter, and orally presented their concerns. (U)

~~CONFIDENTIAL~~

Classified and Extended by 8060

Reason for Extension FCIM II, 1-2.4.2 (2)

Date of Review for Declassification 9/9/2000

Greenberg/Gray-7355

~~CONFIDENTIAL~~

FBI/DOJ

~~CONFIDENTIAL~~

Memorandum R.P. Finzel to Mr. Colwell
RE: U.S. VS. W. MARK FELT, ET AL.
TRIAL PREPARATION

(U) The 8/29/80 damage assessment meeting with DAG Renfrew, State, NSA and CIA was discussed, and it was noted the Attorney General's letter to the President was approved and sent the morning of 8/29/80, prior to the scheduled discussion of damages to the intelligence community. The referral of the FBI damage assessment to DCI through the DAG had not achieved the anticipated impartial evaluation. The CIA response commented only on the lack of CIA "equities" in the FBI damage assessment. It was noted neither CIA nor NSA were requested by the Department of Justice to submit assessments of anticipated damage so that the DCI might comment on damage to the intelligence community as a whole should he so choose. (X)

These facts indicated it may have been a practical impossibility for the Attorney General to have conducted a balancing of prosecutive interests against national security interests in his decision to pursue captioned prosecution. This concern was heightened by the statement in the Attorney General's letter to the President: "Every issue has been successfully resolved except one." (U)

The Director stated, and all present agreed, we should not and would not appeal the Attorney General's judgment in balancing the competing interests in the prosecution, whether or not we concurred in that judgment. Our obligation was to resolve to our satisfaction that the Attorney General had the benefit of all the facts in reaching his decision, and in stating in his letter to the President that all other issues had been successfully resolved. (U)

The Director indicated he would review the letter and other agency responses to it as soon as he received them from the Attorney General. He would also ask the Attorney General if he had read the FBI damage assessment before reaching his decision. (U)

The Attorney General later called the Director to advise him the letter and responses were about to be sent over from the Attorney General's office. During this call, the Director asked the Attorney General if he had read the FBI damage assessment and considered it in reaching his decision. The Attorney General replied he had not read the FBI assessment but had read the responding letter from CIA. (U)

~~CONFIDENTIAL~~

- 2 -

Greenberg/Gray-7356

~~CONFIDENTIAL~~

Memorandum R.P. Finzel to Mr. Colwell
RE: U.S. VS. W. MARK FELT, ET AL.
TRIAL PREPARATION

On the morning of 9/9/80 John W. Nields, Special Counsel in charge of captioned prosecution, advised that the President had decided on a compromise in which the former officials of the other agency on whose behalf the surreptitious entries program was conducted can testify using only the euphemistic device ("Program C"). There will be no official confirmation of the nature of the program, and no declassification of it. (U)

~~CONFIDENTIAL~~

- 3 -

Greenberg/Gray-7357

Memorandum



Exec AD Inv. _____
 Exec AD Adm. _____
 Exec AD LES _____
 Asst. Dir.:
 Adm. Servs. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Legal Coun. _____
 Plan. & Insp. _____
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Public Affs. Off. _____
 Telephone Rm. _____
 Director's Sec'y _____

To : Mr. Colwell

Date 9/10/80

From : P. Finzel

Subject : U. S. vs W. MARK FELT

ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED
 DATE 05-11-2009 BY 65179 dmh/baw/sbs

PURPOSE: The purpose of this memorandum is to recommend release of employees from employment agreements to testify in captioned trial.

RECOMMENDATION: That current and former employees be released from employment agreements to testify in captioned matter consistent with the motion in limine issued by the court.

APPROVED: _____
 Director _____
 Exec. AD-Adm. _____
 Exec. AD-Inv. _____
 Exec. AD-LES _____
 Adm. Serv. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Legal Coun. _____
 Plan. & Insp. _____
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Off. of Cong. & Public Affs. _____

DETAILS: Current and former FBI employees will be appearing as Government and defense witnesses in this case. The Attorney General by memorandum dated 8/11/80 (copy attached) authorized the release of classified information through oral testimony in this matter. This release applies only to classified information originating with the Department of Justice and only that information which is relevant to issues in this case.

Chief Judge William Bryant by Order dated 8/28/80 issued a motion in limine (copy attached) limiting testimony to be given in this matter protecting foreign government information, identity of sources and methods.

So there may be no misunderstanding on the part of current or former FBI employees, they should be released from employment agreements to testify in this matter consistent with the motion in limine.

Enclosures

- 1 - Mr. Colwell
- 1 - Mr. Mullen
- 1 - Mr. Mintz
- 1 - Mr. O'Malley
- 1 - Mr. Revell

- 1 - Mr. Steel
- 1 - Mr. Finzel
- 1 - Mr. Daly
- 1 - Mr. Tierney

PVD:jtw
 (10)

5-PM
 59 NOV 20 1980

62-118045
 Greenberg/Gray-7358

Memorandum



ALL FBI INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-11-2009 BY 65179 dmh/baw/sbs

Subject

United States v. Felt, et al

Date

August 11, 1980
BRC:JWN:ams

To

Trial Counsel and Witnesses
in the Case of United States
v. W. Mark Felt, et al

From

The Attorney General

CAR 8.11.80

Pursuant to the power conferred on me by 28 C.F.R. §17.64 I hereby authorize disclosure at the trial of the above case of classified information originating with the Department of Justice, through oral testimony and through communication of documents to the jury, which is relevant to the issues in that case and essential to a fair trial of the case. With respect to documentary evidence, the authorization applies to the documents designated for trial use on the lists attached to the affidavit of Paul V. Daly dated August 7, 1980 and cleared for trial use by representatives of the FBI working in conjunction with the Government trial attorneys. At the close of the trial, a determination will be made as to which documents or parts of documents containing classified information have, by reason of their publication to the jury, entered the public domain and cannot remain classified. These portions will then be declassified.

This authorization does not apply to classified information which originated with an agency of the United States Government outside the Department of Justice. It further does not permit attorneys knowingly to elicit information through oral testimony falling within the terms of the Composite Claim of Privilege executed by me dated August 7, 1980, in the above case. With respect to information falling within the terms of this Claim of Privilege, disclosure at trial may occur only upon a prior ruling by the Court that the information is relevant and necessary to a fair trial, or upon consent of a representative of the Department of Justice or the Federal Bureau of Investigation.

62-118045-300

Greenberg/Gray-7359

ENCLOSURE

In order to assure proper protection of the above information, the trial attorneys for the Government will exhibit the Composite Claim of Privilege to all trial counsel for the defendants and will seek an order from the Court directing defense counsel to seek prior approval of the Court before knowingly eliciting oral testimony which would disclose information covered by the Composite Claim of Privilege.

Greenberg/Gray-7360

62-118045-300

ENCLOSURE

Greenberg/Gray-7361

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-11-2009 BY 65179 dmh/baw/sbs

UNITED STATES OF AMERICA

v.

W. MARK FELT and
EDWARD S. MILLER

Cr. No. 78-00179

FILED

AUG 28 1980

MEMORANDUM AND ORDER

JAMES F. DAVEY, Clerk

A

The government has moved in limine to prevent witnesses and defense counsel from unilaterally disclosing in open court certain classified information.¹ Instead, the government has requested an order directing witnesses and defense counsel to review information presented in one of three lists compiled by the government: witnesses are "not to disclose any item on such list during testimony ... absent specific direction from the court to do so ..."; counsel are "not knowingly to disclose through questions or argument or [elicitation of] testimony ... the items listed ... absent prior notice to the Government and approval by the court...." The longer list, for the perusal of counsel, identifies approximately twenty-two categories of intelligence information and activities, e.g., "[t]he fact that particular information was received from the intelligence service of a foreign country," "[t]he name of an informant." The shorter lists, for witnesses with various security clearances, identify approximately thirteen/seventeen of the categories contained in the longer list.

Underlying the motion in limine are affidavits submitted by Deputy Attorney General Renfrew and Secretary of Defense Brown asserting categorical claims of privilege. In his in camera, ex

¹The present motion supplements the Government's Motion for Disclosure of Certain Claims of Privilege to Defense Counsel and for an Order Directing Them to Advise the Court Prior to Knowingly Eliciting Testimony Covered by Such Claims of Privilege. This earlier government motion was filed in response to defendant Felt's Motion to Relieve Counsel from Obligations to Protect National Security Information During Trial and for a Trial Continuance.

in its submission, Secretary Brown has elaborated upon the type of information falling within approximately six of the categories comprising the government list. He states that such information qualifies as secrets of state, the disclosure of which could severely damage certain intelligence activities. Deputy Attorney General Renfrew has offered a "composite claim of privilege," explaining how disclosure of information within any of the categories comprising the remainder of the list, e.g., information disclosing electronic surveillance of a foreign counter-intelligence target or intelligence gathering techniques, would adversely affect the national interest.² Judge Renfrew has also added that he is personally familiar with some of the documents designated by the defendants for use at trial, and that such documents contain information falling within the categories of information which, if disclosed, would adversely affect the national interest.³

B

It is important to understand the nature of the motion proposed by the government. Unlike a motion in limine excluding use of testimony at trial, e.g., United States v. Red Feather, 392 F. Supp. 916, 925 (D.S.D. 1975), the government seeks only to establish a notice provision protecting against the unwarranted disclosure of certain information through the question-by-question objection procedures normally used at trial. The standard to be applied to exclude particular witness testimony at trial, or the particular privilege underlying any attempts at exclusion, are not at issue at this point in the proceeding.

The only determinations for this court at present are

²Deputy Attorney General Renfrew asserted the claim of privilege in his capacity as Acting Attorney General, while Mr. Civiletti was out of the country.

³The affidavit of Judge Renfrew was accompanied by two affidavits by officials of the FBI and CIA further describing the nature of the classified information contained in the documents designated by the defendants for use at trial. Judge Renfrew indicated he had read the affidavits, one of which (Daly affidavit) added that the defendants intend to elicit testimony from witnesses who had access to classified information similar to that contained in the trial documents when employed by the FBI or Department of Justice.

whether the government has made an adequate showing for such a notice provision, and whether the provision impermissibly infringes on the defendants' constitutional rights.

The government has met its first burden. All the parties in this case have spent months examining documentary evidence to be tendered at trial, redacting information revealing sensitive information, and preparing substitute information, stipulations, or admissions for presentation to the jury. The government has expressed concern that defense witnesses unfamiliar with the manner in which the documents have been tailored for trial, or with access to classified information never addressed in these pretrial proceedings, might reveal sensitive information at trial. The claims of privilege by Secretary Brown and Judge Renfrew represent reasonable attempts to deal with a difficult situation: the government has no idea exactly what information defense witnesses, or even government witnesses on cross-examination, have reviewed during their years of service and may reveal. Under the circumstances, the proffered claims of privilege, by highlighting particular categories of sensitive information, suffice to alert this court "to the possibility of harm from the disclosure" of certain information at trial, and provide a sufficient basis to adopt a provision "to reserve for the government an opportunity to interpose specific objections" before any information is eventually disclosed at trial. Black v. Sheraton Corp., 564 F.2d 531, 543-45 (D.C. Cir. 1977); see Jabara v. Kelley, 75 F.R.D. 475, 487-89 (E.D. Mich. 1977) ("essential matter is that the executive officer claiming the privilege give careful consideration to the nature of the information withheld and its effect on national security"). Finally, there is no question that the categories of information delineated in the claims of privilege have traditionally been afforded protection. See, e.g. Roviato v. United States, 353 U.S. 53, 62-64 (1957) (informant's privilege); United States v. Reynolds, 345 U.S. 1 (1953) (state secrets); Halkin v. Helms, 598 F.2d 1, 8-11 (D.C. Cir. 1978) (NSA foreign intelligence activity qualifying under states secret privilege); United States v.

...Crim. No: 78-00179, slip op. at 5-7 (D.D.C. Dec. 21, 1979) (intelligence information from foreign sources).

This court is also convinced that the proposed motion does not violate the sixth amendment right of the defendants to effective assistance of counsel or the first amendment rights of defense counsel and witnesses. The portion of the order directed at counsel is premised on the "knowing" disclosure of information through argument or questions directed at witnesses. According to the government, this is to prevent counsel from circumventing "the detailed document preparation process that has taken place over the last six months by knowingly eliciting testimonial information [counsel knows] has been excluded during the document preparation process, or which they know would jeopardize exactly the same type of sources as have received protection from this court during the document preparation process." Government's Reply at 6 (emphasis in original).

The involvement of defense counsel in preparing the documents for use at trial, the categories of information presented in the claims of privilege and the lists attached to the government's motion combine to create adequate notice of the information not to be disclosed without court approval; the proposed standard protects against the sort of inadvertent disclosure alluded to by defendant Felt in his Motion to Supplement and Clarify the Record. The notice scheme falls far short of burdening defense counsel to the point where the defense is denied an "opportunity to participate fully and fairly in the adversary process." Herring v. New York, 422 U.S. 853, 858 (1975). Finally, the government's proposal affects only courtroom testimony and statements by witnesses and counsel; cases dealing with the first amendment repercussions of attempts to control extra-judicial statements or disclosures, e.g. In re Halkin, 598 F.2d 176 (D.C. Cir. 1979), are not persuasive. In even more ordinary circumstances trial judges are regularly involved in controlling the flow and form of the evidence offered to the jury.

It is hereby ORDERED that the government's Motion In Limine

and a Trial Protective Order is granted.

Furthermore, it is hereby ORDERED

(1) That any counsel calling any witness who is a present or former official of the United States Government with access to classified information shall exhibit Attachment B or C attached hereto, depending upon the level of classified information to which the witness had access, and shall instruct such witness not to disclose any item on such list during testimony at the above trial absent specific direction from the court to do so; and.

(2) (a) That all counsel for defendants Felt and Miller with responsibility for eliciting testimony at the trial of the above case familiarize themselves with Attachment A hereto; and

(b) That such counsel are directed not knowingly to disclose through questions or argument or knowingly to elicit testimony about the items listed on Attachment A attached hereto, absent prior notice to the government and approval by the court or consent by the government.

And, it is further ORDERED that the clerk place Attachments A, B, and C to this order under seal.

And, it is further ORDERED that defendant Felt's Motion to Relieve Counsel from Obligations to Protect National Security Information During Trial is denied.


UNITED STATES DISTRICT JUDGE

Date: August 27, 1986

Date of Mail 9-3-80

Classification of Mail:

- ☐ Unclassified
☐ Confidential
☐ Secret
☒ Top Secret
☒ SCI

Mail Category

Letter _____ Airtel _____
LHM _____ Memo XX
Report _____ Other _____
Teletype _____

Subject W. MARK FELTOriginator of Material E. J. O'MALLEY

This serial has been removed and placed in the Special File Room of Records Branch.

Authority - 62-116065

File Number 62-118045-299x1

PERMANENT SERIAL CHARGE-OUT

Greenberg/Gray-7372

RIDS CU SERIAL CHARGE OUT PAGE

Records Management Division
RECORD/INFORMATION DISSEMINATION SECTION

SERIAL CHARGE OUT

This Document Has Been Removed

TOP SECRET MATERIAL

Document can be located in the SFR SCIF

Note To Disclosure:

Please proceed as usual processing other documents in this request.

Requester: Ivan Greenberg

Subject: L. Patrick Gray

FOIPA #: 1104977-001

File #: 62-118045

Serial: 300x

Date of Mail: 9-10-1980

Page(s): 6

Date Removed: 3-9-2009

Team #: CU-2

LAS:

Phone #:

b6
b7C

SERIAL CHARGE OUT

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-11-2009 BY 65179 dmh/baw/sbs

Greenberg/Gray-7373

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Memorandum

TO : Mr. E. J. O'Malley *EOJW*

FROM : J. F. Hengemuhle *JFH*

SUBJECT: UNITED STATES VS. W. MARK FELT, ET AL

DATE: 9/12/80

Exec AD Inv. *AS*
Exec AD Adm. *AS*
Exec AD LES *AS*
Asst. Dir.:
Adm. Servs. *AS*
Crim. Inv. *AS*
Ident. *AS*
Intell. *AS*
Laboratory *AS*
Legal Coun. *AS*
Plan. & Insp. *AS*
Rec. Mgnt. *AS*
Tech. Servs. *AS*
Training *AS*
Public Affs. Off. *AS*
Telephone Rm. *AS*
Director's Sec'y *AS*

PURPOSE:

To report receipt of subpoena from defense in captioned matter and to seek release from employment agreements in order to testify.

RECOMMENDATIONS:

1. That SA Hengemuhle on whom subpoena was served, appear as defense witness without seeking prior Department of Justice (DOJ) approval.

APPROVED: *JFH*

Director	Adm. Serv.	Legal Coun.
Exec. AD-Adm.	Crim. Inv.	Plan. & Insp.
Exec. AD-Inv.	Ident.	Rec. Mgnt.
Exec. AD-LES	Intell. <i>EOJW</i>	Tech. Servs.
	Laboratory	Training
		Off. of Cong. & Public Affs.

AS

2. That Hengemuhle be released from employment agreements in order to testify in captioned trial.

APPROVED: *JFH*

Director	Adm. Serv.	Legal Coun.
Exec. AD-Adm.	Crim. Inv.	Plan. & Insp.
Exec. AD-Inv.	Ident.	Rec. Mgnt.
Exec. AD-LES	Intell. <i>EOJW</i>	Tech. Servs.
	Laboratory	Training
		Off. of Cong. & Public Affs.

AS

- 1 - Mr. F. M. Mullen, Jr.
- 1 - Mr. E. J. O'Malley
- 1 - Mr. J. F. Hengemuhle
- 1 - 67- (Joseph F. Hengemuhle)

JFH:dmy
(5)

CONTINUED - OVER

DEC 1 1980

Memorandum to Mr. E. J. O'Malley
Re: United States vs. W. Mark Felt, et al

DETAILS:

On 9/12/80 [] retired FBIHQ official, served Section Chief Joseph F. Hengemuhle, CI-1 Section, Intelligence Division, with a subpoena calling for Hengemuhle's appearance in the Felt/Miller trial as a defense witness. This subpoena, dated 9/3/80, called for appearance at 10:00 am, 9/15/80, at the U.S. District Court for the District of Columbia. [] also furnished a \$35 check payable to Hengemuhle for "witness fee and mileage." As noted by [] he along with several other ex-Agents are assisting the defense in this matter thus he was requested by the defense to serve the above described subpoena.

b6
b7C

On 9/12/80, subsequent to the above service, Mr. Mark D. Cummings, attorney for the defense, called Hengemuhle stating he wished to discuss with Hengemuhle his participation in the preparation of the "Huston Report" of about ten years ago. Mr. Cummings started to ask some questions over the telephone and it was suggested to him that this matter could be more appropriately discussed person to person. Arrangements were made for Hengemuhle to be interviewed by Cummings in Cummings' office at 3:30, 9/12/80.

This matter has been coordinated with Mr. Paul Donahue of the Legal Counsel Division.

Pursuant to instructions issued by the Deputy Attorney General, Hengemuhle will respond to the subpoena and appear as a witness, if necessary, without seeking prior DOJ approval.

It is requested that SA Hengemuhle be released from his employment agreements in order for him to testify in captioned matter.

The original of the subpoena is being attached to the copy of this memorandum designated for Hengemuhle's personnel file.

The check, in the amount of \$35, will be returned to Mr. Cummings on 9/12/80.

~~CONFIDENTIAL~~

~~SECRET~~

September 17, 1980

MEMORANDUM TO MR. O'MALLEY

RE: U.S. v. W. MARK FELT, et al. (u)

Reur ~~Top Secret~~ memorandum September 3, 1980. (u)

I reviewed with the Attorney General my July 3, 1980, memorandum to him. He had not seen it previously. The Attorney General will take this up with Niels and it is my general understanding that he will have Niels take the proper steps government to government. The Attorney General knows that I desire to notify the [] directly if this is not to be done and I expect that he will let me know if for any reason Niels persuades him otherwise.. ~~(S)~~ ~~(X)~~

I think we should follow up on this in about a week to see exactly what happened in the event I am not notified. (u)

William H. Webster

William H. Webster
Director

- 1 - Mr. Colwell
- 1 - Mr. Mullen

WHW:mfd

EXEMPTED FROM AUTOMATIC
DECLASSIFICATION
AUTHORITY DERIVED FROM:
FBI AUTOMATIC DECLASSIFICATION GUIDE
EXEMPTION CODE 25X(6)
DATE 05-11-2009

FEB 26 1982

Exec AD Inv. _____
Exec AD Adm. _____
Exec AD LES _____
Asst. Dir.:
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

MAR 4 1982

MAIL ROOM ☐

SENT FROM D. G.	
TIME	5:15
DATE	9/17/80

~~CONFIDENTIAL~~

CLASS. & EXT. BY 859
REASON FOR IT 1-2.4.2 (243)
DATE OF REVIEW September 17, 2000
Greenberg/Gray-7376

~~SECRET~~

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Airtel

~~CONFIDENTIAL~~

- 1 - [REDACTED]
1 - Each Exec. Asst. Director
1 - Each Assistant Director
1 - Inspector Young

b6
b7C

9/19/80

To: All SACs
All LEGATS

1 - Mr. O'Malley
PERSONAL ATTENTION

From: Director, FBI

- 1 - Mr. Revell
1 - Mr. Finzel
1 - Mr. Steel

U.S. VS. L. PATRICK GRAY III, W. MARK FELT, AND
EDWARD S. MILLER
TRIAL - SOURCE PROTECTION (U)

- 1 - Mr. Daly
1 - Mr. Tierney

BACKGROUND - GENERAL

The trial of former Acting Associate Director Felt and former Assistant to the Director Miller commenced Monday, 9/15/80 in the U.S. District Court for the District of Columbia, Chief Judge William B. Bryant presiding. The charges against former Acting Director Gray remain outstanding, but his trial has been severed and he may be tried after the trial of Messrs. Felt and Miller is completed. The prosecution case is predicted to take two weeks or more, and the defense case four weeks beginning approximately 9/29/80. (U)

Because the trial is likely to attract media reporting and commentary, this communication addresses source protection issues and related problems which may result. (U)

Trial issues of Weatherman violence, foreign involvement, past FBI practices, prior knowledge by the Department of Justice and the President have presented problems for the FBI and the intelligence community, particularly NSA and CIA. Solutions have been jointly negotiated by the interested agency, prosecutors and defense counsel, and, at times, with the assistance or based on decisions of the trial judge. Documents to be used at trial have been excised, partially rewritten, or made the subject of stipulations which replace documents. Oral testimony will follow the general outlines or philosophy

~~CONFIDENTIAL~~

Classified and Extended by 8060
Reason for Extension FCIM II, 1-2.4.2 (1) (2)
Date of Review for Declassification 9/19/2000

TLT:tdp
(145)

- 1 - Foreign Liaison Unit (route through for review)

MAILED 13
SEP 22 1980
FBI
c AD Inv. _____
c AD Adm. _____
AD LES _____
Dir. _____
Sers. _____
Inv. _____
atory _____
Coun. _____
& Insp. _____
gnt. _____
Sers. _____
g. _____
fs. Off. _____
Rm. _____
Sec'y _____

MAIL ROOM ☐

Greenberg/Gray-7377

~~CONFIDENTIAL~~

Airtel to All SACs and All LEGATs
RE: U.S. VS. L. PATRICK GRAY III, W. MARK FELT, AND
EDWARD S. MILLER

of documents to which the testimony relates, with the trial judge deciding new areas arising during trial. Solutions reached reflect a concern shared by all to balance the competing interests of the national security (primarily in protecting sources) with the Constitutional rights of the defendants to a fair trial. (U)

LEGATS - FRIENDLY FOREIGN SERVICES, SOURCES

(U) Legats are being advised by cable they may assure any source or foreign service that information furnished by them in the past to the FBI has not been cleared for use at trial by either prosecution or defense. All such information has been excised from trial documents. When stipulations have been drafted to replace documents containing information received from foreign sources or governments, the stipulation includes only information received from domestic FBI sources. For instance, information from Legat sources about Venceremos Brigade travel to Cuba has only been included in stipulations to the extent domestic sources confirmed what the foreign sources reported, which in most cases was in the same or greater detail. (S)

(U) A foreign service or source is in a position, therefore, to assert that a U.S. Government representative or the FBI has furnished assurances information relating to his country being disclosed at this trial was obtained by the FBI from sources within the United States. This assertion is possible, even though the foreign service or source may have furnished the same or similar information, since no information was released for trial which was not from a domestic source. In several instances the source is being described in a stipulation as an FBI wiretap in the U.S. or a domestic FBI informant in an attempt to anticipate obvious questions, since the information sometimes appears on its face to have emanated from a foreign country. (S)

FIELD OFFICES - INFORMANTS, ASSETS, CASUAL SOURCES

The actual identities of all informants and assets, and most casual sources, have been excised from documents, and the trial judge has indicated he will not allow witnesses to add such detail during oral testimony. However, because of

~~CONFIDENTIAL~~

- 2 -

Greenberg/Gray-7378

~~CONFIDENTIAL~~

Airtel to All SACs and All LEGATs
RE: U.S. VS. L. PATRICK GRAY III, W. MARK FELT, AND
EDWARD S. MILLER

the likely publicity we can anticipate past and present sources contacting the FBI to inquire if facts disclosed at trial are based on information furnished by them, to express concern that facts disclosed at trial have identified them as the source, or to report being confronted with suspicions or accusations by persons about whom they furnished information to the FBI. (U)

FBIHQ personnel handling the production of documents are not aware of any informants or assets whose identities will be revealed by disclosures during this trial except for one situation which is being handled by separate communication. Nevertheless, it is possible that some sources will feel threatened, if not actually be identified, in view of the detail to be revealed at trial, and the wide media coverage anticipated. (U)

Parents and close relatives of Weatherman fugitives who cooperated fully or partially with the FBI will be specifically identified in documents. This decision was made since the surreptitious entries being prosecuted were generally made against such relatives who did not cooperate in the fugitive investigation. Organizations who cooperated with the fugitive investigation, including banks, telephone companies, bus and airline companies, insurance companies, and hospitals, will sometimes be identified. The name and title of the individual employee contacted will be excised, however. (U)

Field offices contacted by a concerned present or former source should do everything possible to assuage source's concerns. If necessary to assist a source in handling accusations or constructing a safe cover story, you are encouraged to contact FBIHQ which may be able to locate copies of documents introduced in evidence causing possible jeopardy to the source. (U)

Substantive criminal violations arising out of accusations, such as threats, should be opened for investigation or referred to local authorities, as appropriate, and FBIHQ advised promptly. (U)

~~CONFIDENTIAL~~

- 3 -

Greenberg/Gray-7379

~~CONFIDENTIAL~~

Airtel to All SACs and All LEGATs

RE: U.S. VS. L. PATRICK GRAY III, W. MARK FELT, AND
EDWARD S. MILLER

For the duration of the trial, which is expected to last at least six weeks, contact should be made with SA Joseph L. Tierney (FBIHQ Ext. 4763) or ASAC Paul V. Daly (Alexandria Field Office). After the trial, contact should be made with the FBIHQ section handling the substantive matters on which the source reported. (U)

Contents of this communication should be brought to the attention of all investigative and complaint duty personnel. Copies may be reproduced if necessary. (U)

All personnel should refrain from public comment on the trial. Press inquiries should be referred to the Press Office at FBIHQ or the Department of Justice. (U)

MOVED:	Adm. Serv. _____	Legal Coun. <i>JM</i>
	Crim. Inv. _____	Plan. & Insp. <i>RTJ</i>
Director _____		Rec. Mgmt. _____
Exec. AD-Adm. <i>SP</i>	Ident. _____	Tech. Servs. _____
Exec. AD-Inv. _____	Intell. <i>EJG/N</i>	Training _____
Exec. AD-LES _____	Laboratory _____	Off. of Cong. & Public Affs. _____

~~CONFIDENTIAL~~

- 4 -

Greenberg/Gray-7380

FBI

TRANSMIT VIA:

☐ Teletype
☐ Facsimile
☒ AIRTEL

PRECEDENCE:

☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED
 DATE 05-12-2009 BY 65179 dmh/baw/sbs

Date 9/26/80

TO: DIRECTOR, FBI
 (ATT: LEGAL COUNSEL DIVISION)

FROM: ADIC, NEW YORK (197-39)

SUBJECT: U.S. V. PATRICK GRAY, III;
 ET AL
 TRIAL - SOURCE PROTECTION

W. MARK FELT

ReBuairtel to Albany, dated 1/8/79.

This will serve to confirm notification made on 9/26/80, by Supv. [redacted] New York Division, to Assistant Director JOHN A. MINTZ, Legal Counsel Division, FBIHQ, that on 9/25 and 26/80, Mr. MARK CUMMINGS, Attorney for MARK FELT, contacted Supv. [redacted] concerning captioned matter. Mr. CUMMINGS advised that it was his present intention to subpoena Supv. [redacted] as a witness to appear during captioned trial. The primary thrust of questioning by defense counsel would concern prior knowledge of surreptitious entries by US Department of Justice officials, as well as the circumstances of the meeting in April, 1977, between former Attorney General GRIFFIN B. BELL and Special Agents of the NYO.

b6
 b7C

2-Bureau
 1-New York

VAA:mev
 (4)

16 SEP 29 1980

LEGAL COUNSEL

Approved: *[Signature]*

Transmitted _____ (Number) _____ (Time)

Per _____

59 DEC 31 1980

Greenberg/Gray 7381 PRINTING OFFICE: 1980-305-750/5402

EXEMPTED FROM AUTOMATIC
DECLASSIFICATION
AUTHORITY DERIVED FROM:
FBI AUTOMATIC DECLASSIFICATION GUIDE
EXEMPTION CODE 25X(6)
DATE 05-12-2009

~~SECRET~~

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

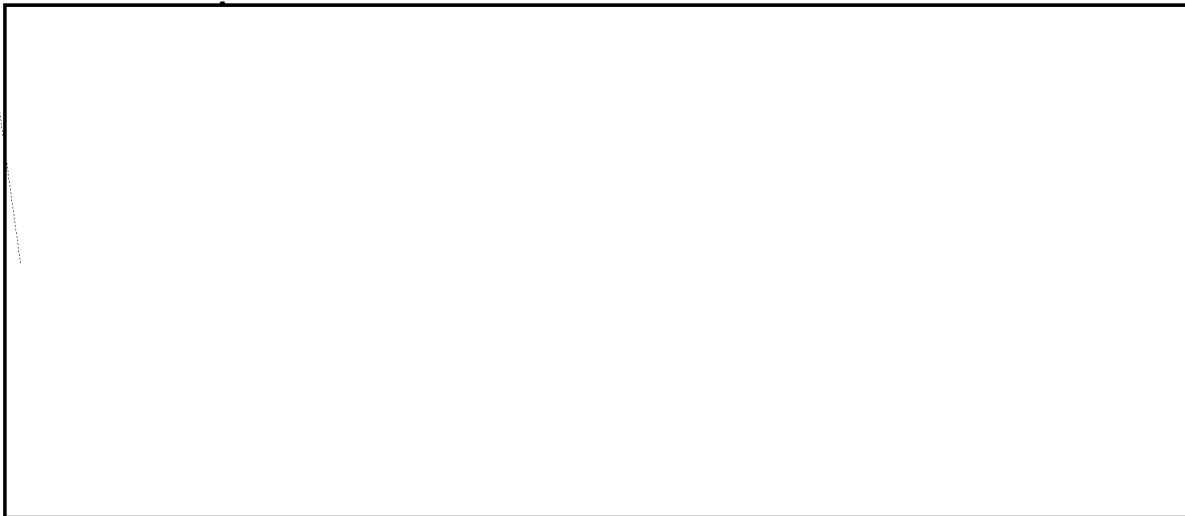
The Attorney General

July 3, 1980

Director, FBI

U.S. vs. W. MARK FELT, et al.

(S)



b1

Special Counsel John W. Nields, Jr., is familiar with the background regarding this disclosure and has a copy of the document containing the information in question. (U)

~~Classified and Extended by 115~~
~~Reason for Extension FCIM II, 1-2.4.2 (1,2,9)~~
~~Date of Review for Declassification 7/3/2010~~

~~SECRET~~

NOTE: See memo E. J. O'Malley to Mr. Mullen dated 7/2/80, captioned as above, JLT:tdp.

1 - Mr. Colwell
1 - Mr. Mullen
1 - Mr. Mintz
PVD:mjl (11)

① - Mr. O'Malley
1 - Mr. Revell
1 - Mr. Steel

1 - Mr. Bailey
1 - Mr. Daly
1 - Mr. Tierney

62-118045-302X1

Greenberg/Gray-7383

SECRET

UNITED STATES GOVERNMENT

Memorandum

~~SECRET~~

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Exec AD Inv. ☒
Exec AD Adm. ☒
Exec AD LES ☒
Asst. Dir.:
Adm. Servs. ☐
Crim. Inv. ☐
Ident. ☒
Intell. ☒
Laboratory ☐
Legal Coun. ☐
Plan. & Insp. ☐
Rec. Mgnt. ☐
Tech. Servs. ☐
Training ☐
Public Affs. Off. ☐
Telephone Rm. ☐
Director's Sec'y ☐

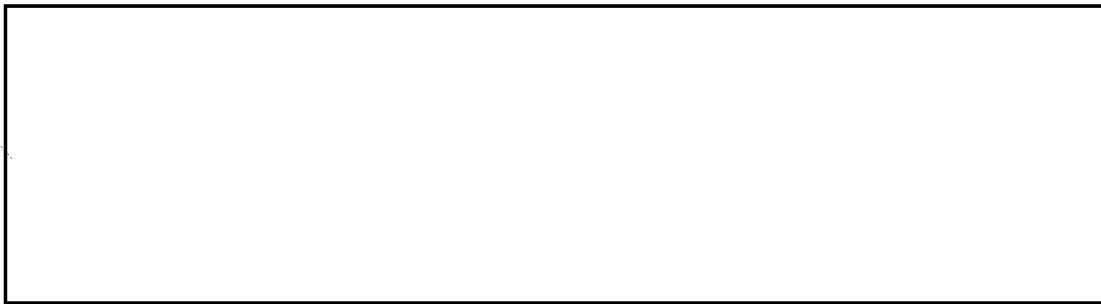
TO : The Director

DATE: 9/23/80

FROM : E. J. O'Malley *EJO*

SUBJECT: U. S. v. W. MARK FELT, et al.

(S)



b1

(S)

I have asked [redacted] to follow up on this with Eric Richard and we will keep you advised. At the appropriate time, [redacted]

EJO:mjt
(5)

- 1 - Mr. Colwell
- 1 - Mr. Mullen
- 1 - Mr. Finzel (Tierney)
- 1 - Mr. O'Malley

b1
b6
b7C

do not discuss details - it is come by appropriate channels -

EXEMPTED FROM AUTOMATIC
DECLASSIFICATION
AUTHORITY DERIVED FROM:
FBI AUTOMATIC DECLASSIFICATION GUIDE
EXEMPTION CODE 25X(6)
DATE 05-12-2009

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

~~SECRET~~

CLASS. & EXT. BY 859
REASON-FCIM II, 1-2.4.2 (203)
DATE OF REVIEW September 23, 2000

MAR 1 1982

59 MAR 23 1982

Greenberg/Gray-7384

FBI/DOJ

CE0010 2840027Z

PP HQ

RECEIVED
TELETYPE UNIT

DE CE

10 OCT 80 00 30z

P 092100Z OCT 80

FM CHARLOTTE (62-4290) (P) OF INVESTIGATION
COMMUNICATIONS SECTION

TO DIRECTOR PRIORITY

BT

UNCLAS

U.S. VS. L. PATRICK GRAY, III, W. MARK FELT, AND EDWARD S.

MILLER.

SA HORACE P. BECKWITH, CHARLOTTE DIVISION, WAS ADVISED
OCTOBER 9, 1980, BY REPRESENTATIVE OF DEFENSE ATTORNEYS IN
THIS MATTER THAT SUBPOENA HAD BEEN ISSUED FOR HIS APPEARANCE
MORNING OF OCTOBER 10, 1980, FOR TESTIMONY AT CAPTIONED TRIAL
IN USDC, WASHINGTON, D. C. UACB, SA BECKWITH WILL APPEAR
FOR TESTIMONY. HE WILL CONTACT SA JOSEPH L. TIERNEY, FBIHQ,
FOR ANY SPECIALIZED INSTRUCTIONS PERTAINING TO TESTIMONY WHICH
MAY REMAIN CLASSIFIED. SA BECKWITH HAS NOT BEEN INFORMED
BY THE DEFENSE OF THE SCOPE OF HIS TESTIMONY.

BT

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs

59 NOV 20 1980

Greenberg/Gray-7385

Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan & Insp. _____
Rec. Mgmt. _____
Tech. Serv. _____
Training _____

62-118045-303

23 NOV 3 1980

62-118045

FBI

TRANSMIT VIA:

☐ Teletype
☐ Facsimile
☒ AIRTEL

PRECEDENCE:

☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date 10/15/80

TO: DIRECTOR, FBI
 ATTN: LEGAL SECTION

FROM: *WDR* SAC, SAN FRANCISCO

SUBJECT: TRAVEL OF SA WILLIAM D. REAGAN
 TO TESTIFY IN FELT/MILLER TRIAL

RMD
 Re SA Joseph Tierney, Legal Section telephone
 call to SA William D. Reagan, 10/15/80.

from Sbs
 SA William D. Reagan has been subpoenaed to testify
 for the defense at the trial of retired Assistant Directors
 Mark Felt and Ed Miller, on 10/17/80. He will depart
 San Francisco on 10/16/80 and proceed as directed.

ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED
 DATE 05-12-2009 BY 65179 dmh/baw/sbs

2 - Bureau (
 1 - San Francisco
 WDR/paa
 (3)

66 NOV 19 1980

Greenberg/Gray-7386

Approved: _____

Transmitted _____

(Number)

(Time)

Per _____

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Memorandum

TO : *PM* Assistant Director
Records Management Division

FROM : Legal Counsel *JM*

SUBJECT: U.S. v. FELT, et al.

DATE: 9-29-80

Exec AD Inv. _____
Exec AD Adm. _____
Exec AD LES _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

W. MARK FELT

At 11:35 a.m. on September 26, Special Agent [redacted] of the New York Office called me and said that he had been contacted by a paralegal representative of Mark Cummings, an attorney participating in the defense in captioned prosecution. The purpose was to request him to be available for an interview and possible testimony as a witness in the case. He said no date had been set for the interview and his purpose in calling was merely to notify FBI Headquarters of this contact. He said he was familiar with the instructions concerning the release of potential witnesses for appearance in this case. I told him he should consider himself released from the employment agreement for purposes of possible testimony and interview in this matter. I requested him to submit an airtel to FBIHQ furnishing the details of this contact.

RECOMMENDATION:

For information.

PM 10

APPROVED:	Adm. Serv. _____	Legal Coun. _____
	Crim. Inv. _____	Plan. & Insp. _____
Director _____		Rec. Mgnt. _____
Exec. AD-Adm. _____	Ident. _____	Tech. Servs. _____
Exec. AD-Inv. _____	Intell. _____	Training _____
Exec. AD-LES _____	Laboratory _____	Off. of Cong. & Public Affs. _____

1 - Personnel file of [redacted]
1 - Mr. Mintz

b6
b7c

JAM:bpr
(3)

62-118045-305

23 NOV 3 1980

62-118045

FC 18 Fy 48

4-888 JM
LEGAL COUNSEL

59 NOV 20 1980

Greenberg/Gray-7395

Date of Mail 10/8/80

Classification of Mail:

- ☐ Unclassified
☐ Confidential
☐ Secret
☐ Top Secret
☒ SCI

Mail Category

Letter _____ Airtel _____
LHM _____ Memo _____
Report _____ Other _____
Teletype XX

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs

Subject W. Mark Felt

Originator of Material FBIHQ

This serial has been removed and placed in the Special File Room of Records Branch.

Authority - 62-116065

File Number 62-118045- ✓

PERMANENT SERIAL CHARGE-OUT

lmr

Greenberg/Gray-7396

FBI

TRANSMIT VIA:

☐ Teletype
☐ Facsimile
☒ A I R T E L

PRECEDENCE:

☐ Immediate
☐ Priority
☒ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☒ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

EXEMPTED FROM AUTOMATIC
DECLASSIFICATION

AUTHORITY DERIVED FROM:

FBI AUTOMATIC DECLASSIFICATION GUIDE

EXEMPTION CODE 25X(1,6)

DATE 05-12-2009

~~SECRET~~

Date 10/27/80

TO : DIRECTOR, FBI
 FROM : SAC, CHICAGO (100-41353) (C) (SQUAD 12)
 SUBJECT: ALCHEMY W,
 U.S. VS. MARK FELT, ET AL
 (U) TRIAL DAMAGE - SOURCE PROTECTION (S)

~~SECRET~~

Re Bureau airtel dated 9/30/80, and teletype
 10/10/80.

b1
 b6
 b7C

As the Bureau is aware, retired SAs [redacted]
 were recently called upon

(S)

~~SECRET~~

Classified and Extended by 5868
 Reason for Extension FCIM, II, 1-2.4.2 (2 & 3)
 Date of Review for Declassification 10/27/00

- ③ - Bureau
 (1 - Administrative Services Division
 Attn: Supervisor [redacted])
 (1 - Intelligence Division
 Attn: Supervisor [redacted])

b6
 b7C

1 - Chicago
 PLT:flk
 (4)

1 copy retained km 4433-jek
1 copy sent to [redacted] ASD
162-118045-

SEE INTELLIGENCE DIVISION ADDENDUM, PAGE 3

b6
 b7C

Approved: *SC [signature]*

Transmitted

(Number) (Time)

Per

NOV 19 1980

Greenberg/Gray 7397

~~SECRET~~

100-442915-3621

~~SECRET~~

CG 100-41353

~~SECRET~~

(U) [redacted] left Chicago at 11:35 AM on 10/12/80, and contacted [redacted] and [redacted] in San Francisco, California. He arrived back in Chicago at 4:30 PM on 10/14/80. The total time expended by [redacted] on the Bureau's behalf was 2½ days including travel time. (S)

b2
b6
b7C
b7D

(S) [redacted] left his home in Mount Prospect, Illinois, by POA at 10:15 AM on 10/17/80, and arrived in St. Louis, Missouri, at 4:45 PM on 10/17/80. He then proceeded on a side trip for personal business to Columbia, Missouri. He returned to St. Louis at 6:00 PM on 10/19/80, obtained lodgings in Hazelwood, Missouri, and [redacted] left St. Louis at 1:35 PM on 10/20/80, and arrived at his residence at 8:05 PM on 10/25/80. The total time expended by [redacted] on Bureau business, including his travel time was 1½ days. (S)

b1
b2
b6
b7C
b7D

Messrs. [redacted] undertook these assignments on short notice and without hesitation put aside their personal affairs in order to advance the Bureau's interests. The contributions of Messrs. [redacted] were invaluable because of their close rapport with the sources contacted. (U)

b6
b7C

In view of the above, the Bureau is requested to award honorariums to both Messrs. [redacted] prepare drafts payable to each of them and forward those drafts to the Chicago office. (U)

b6
b7C

[redacted] annuity is \$30,516.00 and Mr. [redacted] annuity is \$29,172.00. (U)

b6
b7C

~~SECRET~~

~~SECRET~~

ADDENDUM:

INTELLIGENCE DIVISION

JWM:mpb

11/5/80

(S)

b1
b6
b7C

Appropriate memoranda were written and Administrative Services Division (ASD) authorized use of SAs [redacted] as experts whose services were authorized for less than a week. Both former SAs were aware that payment to them would depend on their annuity. Certificates of understanding which must be signed by former SAs [redacted] prepared by ASD, have been forwarded to Chicago 11/4/80. (U) (S)

b6
b7C

Upon signing of certificates of understanding by SAs [redacted] and returning to ASD, checks should be made out by ASD to these former SAs for the services rendered as described in attached airtel. (U)

b6
b7C

~~SECRET~~

Classified and Extended by 1756

Reason for Extension, ECPM II, 1-2.4.2 (2 & 3)

Date of Review for Declassification 11/5/2000

- 3 -

~~SECRET~~

Greenberg/Gray-7399

November 19, 1980

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs

Director, FBI

U. S. vs. FELT, ET AL.

SAC, Newark

W. Mark Felt

Enclosed are Volumes 1-3 of NK 88-8767 as returned by the Department of Justice to FBIHQ on 6/28/78. They had been obtained in 1976.

When returned by the Department, [] was included in Volume 3 of NK 88-8767. Missing from [] were the file back and cover, and serials 1 through 7. The [] serials were removed from the 88 file during the trial and were entered into evidence. They cannot be returned until after all appeals have been exhausted, which will take at least one year. b2

[] relates not to a live source but to a mail cover and to one of the surreptitious entries involved in captioned prosecution. b2

The [] serials will be forwarded when received. *(Circular stamp)* b2

Enclosures (3)

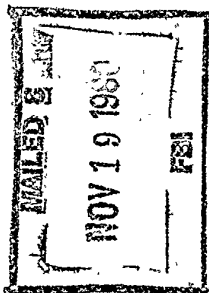
JLT:law (4)

Law
F/1980

62-118045-306

NOV 24 1980

Exec AD Inv. _____
Exec AD Adm. _____
Exec AD LES _____
Asst. Dir.:
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____



DEC 9 1980

MAIL ROOM ☒

Handwritten signature
4-10-80

62-118045-306
Greenberg/Gray-7400

November 19, 1980

Director, FBI

U. S. vs. FELT, ET AL.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs

W. Mark Felt
SAC, Philadelphia

Being forwarded separately are the following Philadelphia files obtained by the Department of Justice in 1976, returned to FBIHQ 6/28/78, and now no longer needed at FBIHQ since the trial of captioned matter is complete:

PH 100-54369 Main file, Volumes 1 through 3
Sub A (one volume)
Sub B, Volumes 1 and 2
Sub C (one volume)

PH 100-50981 Main file (one volume)

PH 176-204 Main file, Volumes 1 through 3

PH 100-54221 Main file (one volume).

3 - PH
(one copy detached, sent with enclosures)

JLT:law (5)

62-118045-307

NOV 24 1980

[Signature]

4-*[Signature]*

Exec AD Inv. _____
Exec AD Adm. _____
Exec AD LES _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Serv. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

Greenberg/Gray-7401

MAIL ROOM ☒

62-118045

MAILED 74
NOV 19 1980
FBI

59 DEC 9 1980

10/29/80

Mr. Colwell:

U. S. vs. Felt, et al.

Former President Richard M. Nixon testified as a last-prosecution witness on rebuttal during the afternoon of 10/29/80.

Mr. Nixon testified on cross-examination that he considered the 1966 cutoff of the use of surreptitious entries to be a restriction by the Director of the FBI. Mentioning Presidential Directives of Roosevelt, Truman and Eisenhower restated in a 1969 order of the General, Mr. Nixon stated his belief that the Presidential authority to order such searches in appropriate cases had been delegated to the Director of the FBI. The Huston Plan ordered the Director to remove his self-imposed restriction. The rescission of the Huston Plan a few days later left the Director in the same legal position he had been all along: the possessor of Presidential authority to order warrantless searches in appropriate cases who had decided not to exercise that authority. In Mr. Nixon's opinion former Acting Director L. Patrick Gray held the same power that Mr. Hoover had.

In a similar last-minute action, the prosecution has also called former Attorneys General Clark, Mitchell, Kleindienst and Katzenbach. Only Mr. Katzenbach remains to testify and the prosecution has indicated he will be their last witness.

There was a brief demonstration in court by a small group of persons against Mr. Nixon which was quelled quickly by deputy marshals. The demonstrators were escorted from the room without incident.

R. P. Finzel
R. P. Finzel

1 - Mr. Colwell
1 - Mr. Mullen
1 - Mr. Joseph
1 - Mr. O'Malley
1 - Mr. Revell
1 - Mr. Mintz
1 - Mr. Steel
1 - Mr. Finzel
1 - Mr. Tierney
JLT:mjl (10)

b6
b7C

59 DEC 9 1980

Greenberg/Gray-7402

Exec AD Inv.	_____
Exec AD Adm.	_____
Exec AD LES	_____
Asst. Dir.:	
Adm. Servs.	_____
Crim. Inv.	_____
Ident.	_____
Intell.	_____
Laboratory	_____
Legal Coun.	_____
Plan. & Insp.	_____
Rec. Mgnt.	_____
Tech. Servs.	_____
Training	_____
Public Affs. Off.	_____
Telephone Rm.	_____
Director's Sec'y	_____

FBI/DOJ

SAC, San Francisco

11/18/80

Director, FBI (62-118045)

U. S. vs. W. MARK FELT, ET AL

Being forwarded under separate cover are the following sections of SF 100-34639 concerning [redacted] which were processed for discovery at FBIHQ in connection with captioned prosecution:

b6
b7C

Main File, Sections 22 through 29;
Sub A, Section 4 (serial 1A50 - open);
Sub B, one section (Tower);
Sub I - one section;
Sub II - Sections 1 through 4;
Sub III - one section;
Sub 4 - one section;
Sub 5 - one section;
Sub 6 - Sections 1 and 2.

3 - San Francisco
(one detached with enclosures)

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs

1 - Mr. Tierney

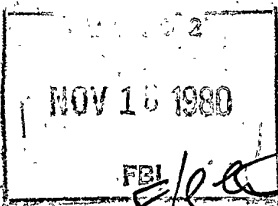
JLT/pcn
(5)

62-118045-309

NOV 19 1980

Greenberg/Gray-7403

Exec AD Inv. _____
Exec AD Adm. _____
Exec AD LES _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____



MAIL ROOM

BH000/ 3151715

PP HQ

DE BH

P 101715Z NOV 80

10 NOV 80 17 23z

COMMONS SECTION

FM BIRMINGHAM (62-0)

TO DIRECTOR PRIORITY

BT

UNCLAS

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED

DATE 05-12-2009 BY 65179 dmh/baw/sbs

ATTN OFFICE OF CONGRESSIONAL AND PUBLIC AFFAIRS; ATTN MR. YOUNG
W. MARK FELT, FORMER ASSOCIATE DIRECTOR; EDWARD MILLER, FORMER
ASSISTANT DIRECTOR; INFO CONCERNING.

C. H. ROBERTSON (X), [REDACTED], BIRMINGHAM, ALA. (MT.
BROOK), 35223, WHO DESCRIBED HIMSELF AS A PRIVATE, RETIRED, AND
CONCERNED CITIZEN ADVISED HE IS SPONSORING A PETITION TO BE
CIRCULATED NATIONWIDE CALLING FOR THE PARDON OF FELT AND MILLER.

PETITION TO ALSO CALL FOR THE REIMBURSEMENT OF ATTORNEYS FEES.

THE CIRCULATION OF THE PETITION FOR THE PARDON WILL INCLUDE ALL
POLICE DEPARTMENTS IN THE U. S. AND OTHER ENTITIES. ROBERTSON
STATED THAT HE WAS HOPEFUL THAT MOUNTING PRESSURE WOULD CAUSE PRES.
CARTER TO PARDON FELT AND MILLER AND IF THIS DOES NOT OCCUR, HE WILL
PERSONALLY ATTEMPT TO PRESENT A PETITION TO PRESIDENT-ELECT REAGAN

b6
b7C

PERS. REC. UNIT

162
59 DEC 16 1980

WPT

Greenberg/Gray-740

PAGE TWO BH 62-0 UNCLAS

FOLLOWING HIS OATH OF OFFICE.

BH INDICES NEGATIVE RE



b6
b7C

BT

Greenberg/Gray-7405

Memorandum

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs



To : DIRECTOR, FBI
ATTN: OFFICE OF CONGRESSIONAL &
PUBLIC AFFAIRS, MR. ROGER YOUNG
From : *mm* SAC, BIRMINGHAM (62-2684)

Date 11/20/80

W
Subject : *D* W. MARK FELT, FORMER ASSOCIATE DIRECTOR;
EDWARD MILLER, FORMER ASSISTANT DIRECTOR;
INFORMATION CONCERNING

ReBHtel 11/10/80.

Attached are two self-explanatory copies of a Petition and Affidavit by CHARLES H. ROBERTSON, Birmingham, as provided 11/18/80.

The petition and affidavit was filed by ROBERTSON in a local court on 11/17/80 for record purposes.

For information.

Wdu

(X)

62-118045-311

Wdu
2 - Bureau (Enc. 2)
1 - Birmingham
JJR:rte
(3)

15 DEC 1 1980

Roger Young
OFF. OF CONG. AND PUB. AFF.

OCPA/*Wdu*

59 DEC 19 1980

Greenberg/Gray-7406

FBI/DOJ

REAL 1988 PAGE 681

STATE OF ALABAMA)
JEFFERSON COUNTY)

Before me, the undersigned notary public in and
for said county in said state, personally appeared CHARLES H.
ROBERTSON, who after being duly sworn, deposes and says as
follows:

My name is CHARLES H. ROBERTSON and I live at
3324 Overton Road, Birmingham, Alabama 35223. On this date,
I have prepared the attached petition addressed to the Honor-
able Ronald Reagan pertaining to the prosecution and conviction
of W. Mark Felt and Edward Miller. This petition was originated
by me in the City of Birmingham, Jefferson County, Alabama,
and will be distributed nationwide for signatures.

Charles H. Robertson

Sworn to and subscribed
before me this 17th day
of November, 1980.

Notary Public

My commission expires:
5/28/84

PETITION TO: THE HONORABLE RONALD REAGAN, PRESIDENT OF THE UNITED STATES OF AMERICA

WE, THE UNDERSIGNED CITIZENS OF THE UNITED STATES OF AMERICA, DO HEREBY EXPRESS OUR GRAVE CONCERN OVER THE PROSECUTION AND CONVICTION BY THE U. S. DEPARTMENT OF JUSTICE OF FORMER ASSISTANT FEDERAL BUREAU OF INVESTIGATION DIRECTORS, W. MARK FELT AND EDWARD MILLER. THE ONLY ACTS COMMITTED BY THESE LOYAL AMERICANS WAS AN ATTEMPT TO PROTECT AMERICA FROM TERRORIST GROUPS WHO WOULD TAKE AWAY OUR PRECIOUS LIBERTIES.

WE, THEREFORE, RESPECTFULLY PETITION YOU, AS PRESIDENT OF THESE GREAT UNITED STATES, TO TAKE WHATEVER STEPS YOU DEEM NECESSARY TO CLEAR THE NAMES OF THESE LOYAL AMERICANS, INCLUDING A PRESIDENTIAL PARDON.

- | | |
|-----------|-----------|
| 1. _____ | 20. _____ |
| 2. _____ | 21. _____ |
| 3. _____ | 22. _____ |
| 4. _____ | 23. _____ |
| 5. _____ | 24. _____ |
| 6. _____ | 25. _____ |
| 7. _____ | 26. _____ |
| 8. _____ | 27. _____ |
| 9. _____ | 28. _____ |
| 10. _____ | 29. _____ |
| 11. _____ | 30. _____ |
| 12. _____ | 31. _____ |
| 13. _____ | 32. _____ |
| 14. _____ | 33. _____ |
| 15. _____ | 34. _____ |
| 16. _____ | 35. _____ |
| 17. _____ | 36. _____ |
| 18. _____ | 37. _____ |
| 19. _____ | 38. _____ |
| | 39. _____ |
| | 40. _____ |

WHEN THIS SHEET FULL, RETURN TO:

Charles H. Robertson
P. O. Box 43004
Birmingham, Alabama 35213

STATE OF ALA. PERSON CO
11 FEBRUARY 1988
REAL 1988 PAGE 681

400
47 11 88
STATE

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Memorandum

TO : Mr. Finzel
 FROM : J. L. Tierney

ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED
 DATE 05-12-2009 BY 65179 dmh/baw/sbs

DATE: 12/1/80

SUBJECT: U.S. vs. KEARNEY
 U.S. vs. FELT, et al.
 DISPOSITION OF RECORDS

W. MARK FELT

PURPOSE: To outline records being retained.

SYNOPSIS: On record material retained during criminal discovery in this matter is filed in 62-118045 (Gray, Felt, Miller) and 62-117958 (Kearney). Correspondence prepared by FBI personnel supervised by the Civil Rights Division (CRD) and coordinated by Mr. Richard E. Long has been filed in 62-117964, which was also used by personnel handling the subsequent administrative inquiry in the same matter. Unrecorded material compiled and gathered during criminal discovery consists of records of discovery disclosures and deliveries, original (tickler) documents seized by the Department in 1976, original records of surreptitious entries from the New York Office, and ticklers from the Senstudy/House Study Special. The overall pattern of retention during the appeal has been discussed with the prosecutors. Although retention during appeal is clearly required, very little actual need for access during appeal is anticipated. Most of this material is also subject to a court-ordered prohibition against destruction in a civil litigation. The Department is returning original FBI documents as they are encountered and will take appropriate steps to retrieve discovery materials from defense counsel and from the court.

RECOMMENDATION:

None. For information.

2-3-81
 Enc.

- 1 - Mr. Colwell
 1 - Mr. Mintz
 1 - Mr. Otto
 Atten: Mr. Ford
 2 - Mr. Finzel
 Atten: Mr. Lang
 Mr. Litzenberg

- 1 - Mr. DeLoach
 1 - Mr. Tierney
 1 - [redacted]

ULT:law (9)

APPROVED:

Director _____
 Exec. AD-Adm. _____
 Exec. AD-Inv. _____
 Exec. AD-LES _____

Adm. Serv. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____

Legal Coun. _____
 Plan. & Insp. _____
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Off. of Cong. & Public Affs. _____

62-118045-

NOT RECORDED

DEC 31 1980

CONTINUED - OVER

Greenberg/Gray-7409

Exec AD Inv. _____
 Exec AD Adm. _____
 Exec AD LES _____
 Asst. Dir.:
 Adm. Servs. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Legal Coun. _____
 Plan. & Insp. _____
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Public Affs. Off. _____
 Telephone Rm. _____
 Director's Sec'y _____

b6
 b7C

ORIGINAL FILED IN 62-117958-32

Mr. Tierney to Mr. Finzel Memo
Re: U.S. vs. Kearney; U.S. vs. Felt, et al.,
Disposition of Records

DETAILS: Criminal discovery in the matter styled U.S. vs. John J. Kearney, began in January, 1978, was worked out of 62-117958.

Criminal discovery in the matter styled U.S. vs. L. Patrick Gray III, W. Mark Felt, and Edward S. Miller, began in April, 1978, and ended in November, 1980, was worked out of 62-118045.

By separate memorandum the records maintained by FBI personnel (primarily 1976-1977) coordinated by Mr. Richard E. Long and supervised by the CRD have been filed as serials and a bulky exhibit in 62-117964. This file was originally opened to handle the subsequent administrative inquiry by the FBI which grew out of the work of the CRD and Mr. Long's personnel.

Attached is an Inventory of unrecorded materials accumulated during the criminal discovery proceedings in captioned matters as they are now stored.

Discovery materials actually delivered to defense counsel are in Cabinets 1, 2 and 3.

Discovery materials reviewed by defense counsel, from which they made delivery requests may be broken down into three categories: FBIHQ Weathfug (Cabinets 7 through 12 and 16), New York Weathfug (Cabinets 13, 14 and 15), and Surreptitious Entries which were not included in the indictment (Cabinets 9 [drawer 1], 17, 18 [drawers 1, 3 and 4], and 19).

Materials seized in August-September, 1976, at FBIHQ are in Cabinets 4, 5, 6 and 16 [drawer 5]). They are tickler folders, primarily from IS-2 Section in Division 5. Although ticklers, they have in some respects been treated as original documents during discovery (not in the Records Management Division sense of the word).

New York original files, also seized in 1976 and known as "SAC folders" are contained in Cabinet 18 (drawer 2).

Senstudy and House Study ticklers are in Cabinets 21 and 22. These were used primarily for lead value during discovery and are the typical duplicative set of copies of what is

Mr. Tierney to Mr. Finzel Memo
Re: U.S. vs. Kearney; U.S. vs. Felt, et al.,
Disposition of Records

on record. Following completion of the appeal and resolution of civil litigation, these ticklers should be considered for destruction.

Upon resolution of the appeal and civil litigation issues, both discovery materials delivered and discovery materials reviewed should be considered for destruction.

Among the packages of discovery materials delivered are several which are answers to general questions which may have some value as the product of research into such areas as notice of use of the surreptitious entries technique outside the FBI. These instances are concentrated in the first series of packages numbered 1 through 19, and to a lesser extent in the first part of the second series numbered 1 through 49.

The Department has pointed out that defense counsel have an obvious need to retain possession of materials delivered in criminal discovery, which need will expire upon completion of the appeal process. Their continued retention of these materials after that creates a potential problem since they represent the same clients as defendants in civil litigation, for which there has been or will be civil discovery of the same documents. Civil discovery is processed to different standards, notably for disclosure to uncleared attorneys, unlike the criminal discovery in which all counsel were granted TS and SI clearances by the Attorney General. The Department will endeavor to retrieve the criminal discovery materials at that point.

The packages of discovery materials reviewed but not delivered will be of no value whatsoever after the appeal, and should be destroyed, subject only to the requirements of civil discovery. Prudence will dictate retention of an inventory of precisely which files were processed, but they are all processed copies of complete files within a given time frame. The processing standards differ from those which would be used under any other circumstances and the records are useless for any purpose outside this case.

The materials seized at FBIHQ in August-September, 1976, are three of the 22 cabinets seized at the time. In general they are those records the Department sought to retain for trial in October, 1976, records returned by the Department which they held

Mr. Tierney to Mr. Finzel Memo

Re: U.S. vs. Kearney; U.S. vs. Felt, et al.,
Disposition of Records

between 1976 and 1979, and records selected by defense counsel for review. With a few exceptions, they are classic ticklers and prime candidates for destruction after the appeal, subject to the future requirements of civil discovery which cannot be evaluated until that time.

Original New York files seized in 1976 or brought in to FBIHQ during the investigation or during discovery have been turned over to Civil Discovery Unit #2 in the Document Classification and Review Section and the New York Office advised. They will be returned to New York when no longer needed for civil discovery.

At the specific request of the Department the "SAC folders" are being kept with the criminal discovery materials. They should not be returned to New York without conferring with the Department. Since they were maintained in New York in the SAC's office in unserialized chronological order, and represent records of a discontinued program retained beyond the time when they should have been destroyed in the normal course of business, consideration should be given to retaining them at FBIHQ as a bulky exhibit to 62-117964 when the appeal is completed if they cannot be destroyed. They occupy one full file drawer.

The Department has custody of, or is responsible for retrieving discovery materials in the hands of defense counsel (mentioned above), materials submitted to the court in camera, and discovery materials located in the vault maintained by the Department's Security Officer. These areas have been discussed with the Department and they assure they will take the necessary steps to retrieve them at the appropriate time.

The Department also has possession of an undetermined amount of unidentified original FBI records which they obtained themselves during search and seizure operations, from FBI personnel during the investigation, or during discovery and preparation for trial. Some of these documents have been entered into evidence and the Department will not seek their retrieval until the appeal is over. Most are mixed through the records of the prosecutors office, however, and they have agreed to return them to us as they review their records prior to filing which they are now doing. There is no existing record of what materials are in their hands and no practical method to create one in view of the varied means by which they obtained the records. None of the original records in their hands are

Mr. Tierney to Mr. Finzel Memo
Re: U.S. vs. Kearney; U.S. vs. Felt, et al.,
Disposition of Records

believed to be unique, extraordinarily sensitive, or essential to current FBI operations. They have the FBI copy of discovery package number 216 (Venceremos Organization) and NY 100-166899 [redacted] one volume) which they are attempting to locate and return.

b6
b7C

Materials discussed above, with the possible exception of the Senstudy/House Study ticklers, are subject to the prohibition against destruction contained in the 5/17/79 order by the court in the case styled Judith Clark, et al., v U.S.A., et al.; USDC, SDNY; 78 Civ. 2244 (MEL). The materials have been marked and copies of the court order affixed.

UNITED STATES GOVERNMENT

Memorandum

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Exec AD Inv. ✓
 Exec AD Adm. ✓
 Exec AD LES ✓
 Asst. Dir.:
 Adm. Servs. ✓
 Crim. Inv. ✓
 Ident. ✓
 Intell. ✓
 Laboratory ✓
 Legal Coun. ✓
 Plan. & Insp. ✓
 Rec. Mgnt. ✓
 Tech. Servs. ✓
 Training ✓
 Public Affs. Off. ✓
 Telephone Rm. ✓
 Director's Sec'y ✓

TO : Mr. Colwell

DATE: 11/24/80

FROM : R. H. Finzel

ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED
 DATE 05-12-2009 BY 65179 dmh/baw/sbs

SUBJECT: W. MARK
U. S. vs. FELT, et al

PURPOSE: To advise current status of case and related Bureau activities.

RECOMMENDATION: None. For information.

APPROVED: ✓ Adm. Serv. ✓ Legal Coun. ✓
 Director ✓ Crim. Inv. ✓ Plan. & Insp. ✓
 Exec. AD-Adm. ✓ Ident. ✓ Rec. Mgnt. ✓
 Exec. AD-Inv. ✓ Intell. ✓ Tech. Servs. ✓
 Exec. AD-LES ✓ Laboratory ✓ Training ✓
 Off. of Cong. & Public Affs. ✓

DETAILS: Recent contacts with representatives of both prosecution and defense counsel have revealed the following regarding the status of this case:

Sentencing before Judge Bryant remains set for 12/15/80. Both defendants met with Probation Officers following their convictions and visits by Probation Officers to their homes have been scheduled. The defense thinks incarceration is a realistic possibility.

The defense has 45 days from judgment (sentencing) to file briefs, and the Government then has 45 days to reply. The defense believes their 45 days will not begin to run until the full record is forwarded from the District Court to the Circuit Court of Appeals, which they believe will not happen until after the Christmas holidays. The defense suspects the appeal may not be argued in the Spring, but will be held over for the Fall term of the Circuit Court.

- 1 - Mr. Colwell
- 1 - Mr. Joseph
- 1 - Mr. Mullen
- 1 - Mr. Mintz
- 1 - Mr. O'Malley
- 1 - Mr. Revell
- 1 - Mr. Finzel
- 1 - Mr. Steel
- 1 - Mr. Daly
- 1 - Mr. Tierney

JLT/pcn
 (11)

Greenberg/Gray-7430

CONTINUED - OVER

Norfolk, Virginia 23508

Nov. 27, 1980

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED

DATE 05-12-2009 BY 65179 smh/baw/sbs

The Honorable Gerald R. Ford, Jr.
President-elect of the United States
2441 Airport Boulevard, Suite 2450
Los Angeles, California 90045

Dear Mr. President:

I am very concerned and disturbed about the recent re-arrests of J. Edgar Hoover and William French Smith, two senior officials of the Federal Bureau of Investigation, for charges of mistreatment of blacks in order to obtain witness statements in 1972 on 1973.

As you well know, they were only following the usual procedure at that time for obtaining evidence against criminals, two of whom were charged in violence and even plans to overthrow the government.

At any rate, they were acting under the orders of the director and following the law which calls for the protection of our country.

As the Chief Administrator, I am that one of your chief duties of vigilance is to protect the honor of the FBI and the public trust. I am turned a full and complete page for these legal and ethical violations.

A full review would not only be a kind of a check but it is necessary that it would be justice and decency. It would also be an indication that your administration places common sense and integrity above any political or technical considerations.

These men are not criminals and their conviction has already been a travesty on justice. No justice that can be done in a full review and respect of their legal rights.

I hope that you will give these men the full and fair review.

Best copy available

12-118045-312X

Greenberg/Gray-7431

cont-9

[Redacted]
Norfolk, VA 23508

b6
b7C

11-29-80

OUTSIDE SOURCE

Dear Mr. Director:

I hope you will see fit to
recommend a pardon for
Mrs. Felt and Miller.

encl 1

Sincerely,

(Signature)

[Redacted]

b6
b7C

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs

62-118045-312X

DEC 11 1980

Encls -

Greenberg/Gray-7432

CORRESPONDENCE

12-10 Ack
Cen 12/80
Cen 12/80

ENCLOSURE

DEC 16 1980

[Redacted]
Norfolk, Virginia 23508

b6
b7C

PERS. REC. UNIT

January 9, 1981

OUTSIDE SOURCE

Mr. W. Mark Felt
3216 Wynford Drive
Fairfax, Virginia 22030

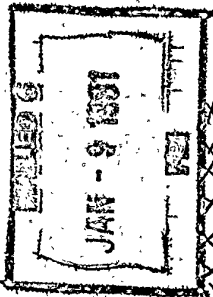
Dear Mark:

The enclosed letters and checks were received
at FBI Headquarters, and I am forwarding them to you. I'm
sure you are finding the support from both your friends
and those you don't even know most gratifying.

Sincerely yours,

Roger S. Young
Assistant Director
Office of Congressional
and Public Affairs

b6
b7c



Enclosures (8)
\$100 Check from [redacted] #131. [redacted] Dayton, Ohio)
Two letters from [redacted] dated 12/16/80. [redacted] Houston, Texas)
\$10 Check from [redacted] #466. [redacted]
Letter from [redacted] received 12/23/80. [redacted] Cambridge, Mass)
\$5 Check from [redacted] #244. [redacted]
Letter from [redacted] dated 12/18/80.
\$10 Check from [redacted] #183 (3722
[redacted] Baltimore, Maryland 21207.

62-118045-313

Exec AD Inv. _____
Exec AD Adm. _____
Exec AD LES _____
Asst. Dir.:
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

1 - Mr. Edward S. Miller
10454 Armstrong Street
Fairfax, Virginia 22030

MN:sah (4)

Greenberg/Gray-7433

RECEIVED
JAN 12 1981

JAN 12 1981

9 FEB 4 1981

PERS. ACCOUNT

MAIL ROOM ☐

January 9, 1981

OUTSIDE SOURCE

JR
[Redacted]
Baltimore, Maryland 21207

b6
b7C

Dear [Redacted]:

Your support is very much appreciated. Your
check has been forwarded to Mr. W. Mark Felt.

Sincerely yours,

[Signature]
Roger S. Young
Assistant Director
Office of Congressional
and Public Affairs

MN:sah (3)

sch

V-28

DE-103

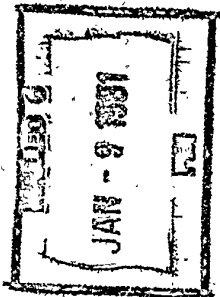
62-118045-314

LBI
RECEIVED
JAN 10 1981

JAN 12 1981

JAN 8 1 14 PM '81

Exec AD Inv. _____
Exec AD Adm. _____
Exec AD LES _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____



66 JAN 29 1981

Greenberg/Gray-7434

MAIL ROOM ☒

[Signature]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs

January 9, 1981

OUTSIDE SOURCE

[Redacted]
Houston, Texas 77002

b6
b7C

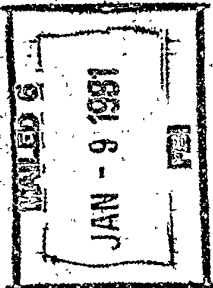
Dear [Redacted]:

Your support is very much appreciated. Your
letter and check have been forwarded to Mr. W. Mark Felt.

Sincerely yours,

Roger S. Young
Assistant Director
Office of Congressional
and Public Affairs

MN:sah (3)



V-28

DE-103 62-118045-315

- Exec AD Inv. _____
- Exec AD Adm. _____
- Exec AD LES _____
- Asst. Dir.:
 - Adm. Servs. _____
 - Crim. Inv. _____
 - Ident. _____
 - Intell. _____
 - Laboratory _____
 - Legal Coun. _____
 - Plan. & Insp. _____
 - Rec. Mgnt. _____
 - Tech. Servs. _____
 - Training _____
 - Public Affs. Off. _____
 - Telephone Rm. _____
 - Director's Sec'y _____

MAIL ROOM

Greenberg/Gray-7435

JAN 12 1981

66 JAN 29 1981

JAN 8 4 11 PM '81

January 9, 1981

OUTSIDE SOURCE

Dayton, Ohio 45414

b6
b7C

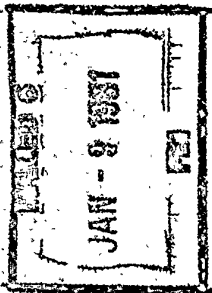
Dear [redacted]:

Your support is very much appreciated. Your
letter and check have been forwarded to Mr. W. Mark Felt.

Sincerely yours,

Roger S. Young
Assistant Director
Office of Congressional
and Public Affairs

MN:sah (3)



Exec AD Inv. _____
Exec AD Adm. _____
Exec AD LES _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

64 JAN 30 1981

Greenberg/Gray-7436

MAIL ROOM ☒

DE-44
V-28

62-118045-316

RECEIVED
JAN 9 1981

RECEIVED
JAN 9 1981

RECEIVED
JAN 9 1981

mm

December 10, 1980

~~OUTSIDE SOURCE~~

[Redacted]
[Redacted]
[Redacted]

b6
b7C

Norfolk, Virginia 23508

Dear [Redacted]:

W. MARK FELT

It was indeed kind of you to write on November 29th and furnish a copy of your letter to President-elect Reagan. Judge Webster has asked me to thank you for your thoughtfulness. We certainly appreciate your interest in expressing your views regarding the conviction of two former FBI officials and are grateful for your support.

Sincerely yours,

Roger S. Young
Inspector in Charge
Office of Congressional
and Public Affairs

b6
b7C

1 - Mr. Young - Enclosures (2)

NOTE: Bufiles indicate limited correspondence with [Redacted]. His enclosure is a letter to President-elect Reagan expressing his support of Messrs. Felt and Miller and requesting a full and complete pardon for them.

CAM:clr (4)

DE-104 62-118045-317

Exec AD Inv. _____
Exec AD Adm. _____
Exec AD LES _____
Asst. Dir.:
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

Greenberg/Gray-7437

59 FEB 9 1981

MAIL ROOM ☒

DEC 11 1980

RECEIVED

Memorandum

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs



Exec AD Adm. _____
Exec AD Inv. _____
Exec AD LES _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Off. of Cong. & Public Affs. _____
Telephone Rm. _____
Director's Sec'y _____

To : Mr. Finzel

Date FEB 20 1981

From : J. L. Tierney

Subject : U. S. vs. FELT, ET AL.
EXHIBIT: DOCUMENT CAMERA

PURPOSE: To record status of document camera introduced in evidence and arrange follow-up.

RECOMMENDATION: That Records Management Division recontact Departmental Attorney Frank Martin on or about September 1, 1981, and thereafter at six month intervals until the document camera is returned to the FBI.

APPROVED: Adm. Serv. _____ Legal Coun. _____
Crim. Inv. _____ Plan. & Insp. _____
Director _____ Rec. Mgnt. _____
Exec. AD-Adm. _____ Ident. _____ Tech. Servs. _____
Exec. AD-Inv. _____ Intell. _____ Training _____
Exec. AD-LES _____ Laboratory _____ Off. of Cong. & Public Affs. _____

DETAILS: A typical document camera in an attache case was charged out to the Department of Justice for use as an exhibit during captioned trial.

Although the trial has been completed, there is an appeal pending. The camera was received in evidence during the trial. It is now in the possession of Departmental Attorney Francis J. Martin, Criminal Appeals Section, Criminal Division. Mr. Martin does not want to return the camera to the FBI until the appeal is resolved. The status of the camera should be reviewed at six month intervals. Since the appeal is unlikely to be argued in the D. C. Circuit until the Fall of 1981, it should first be reviewed approximately September 1, 1981, by contacting Mr. Martin.

1 - Laboratory Division
Room 3449 TL #241)

1 - Finzel
1 - Dean (Lang)

SLT:jch (6)

15 MAR 2 1981

Greenberg/Gray-7438

69 MAR 11 1981

UNITED STATES GOVERNMENT

Memorandum

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Exec AD Inv. _____
 Exec AD Adm. _____
 Exec AD LES _____
 Asst. Dir.: _____
 Adm. Servs. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Legal Coun. _____
 Plan. & Insp. _____
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Public Affs. Off. _____
 Telephone Rm. _____
 Director's Sec'y _____

TO : Mr. Finzel *F/Rux*

DATE: 2/17/81

FROM : P. L. Andrews *PLA/Rux*

ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED
 DATE 05-12-2009 BY 65179 dmh/baw/sbs

SUBJECT: ~~COST DATA~~
~~GRAY, FELT, MILLER DISCOVERY SPECIAL~~

PURPOSE:

To provide estimated costs associated with the Gray, Felt, Miller case.

RECOMMENDATION: For information.

APPROVED: Adm. Serv. _____ Legal Coun. _____
 Crim. Inv. _____ Plan. & Insp. _____
 Director _____ Rec. Mgnt. *F/Rux*
 Exec. AD-Adm. _____ Tech. Servs. _____
 Exec. AD-Inv. _____ Training _____
 Exec. AD-LES _____ Off. of Cong. & Public Affs. _____

DETAILS:

FBI spent an estimated 1,507,387.20 on the Gray, Felt, Miller Discovery Special (including the time spent on Kearney Discovery Special).

The estimated costs below include salary costs of Agent and support personnel; reproduction costs (1,500,000 copies) and space costs from January, 1978, through December, 1980. These costs are estimated through the GS-15 level and do not include any attempt to track the time of higher level officials/conferences with the Director.

Kearney (introductory phase of Gray, Felt, Miller
 1/24/78 - 4/10/78)

Agent and support salary costs	\$ 419,087.00
Reproduction costs	18,000.00
Space costs	26,934.60
Subtotal	\$ 464,021.60

Gray, Felt, Miller (4/10/78 - 9/80)

Agent and support salary costs	\$ 945,101.00
Space costs	56,261.60
Reproduction costs	42,003.00
Subtotal	\$1,043,365.60
TOTAL	\$1,507,387.20

53 MAR 11 1981

- 1 - Mr. Finzel
 1 - Mr. Tierney b6
 1 - [redacted] b7C

RR:evp

(4).

Greenberg/Gray-7439

TABLE OF CONTENTS

<u>Date</u>	<u>Witness</u>	<u>Transcript</u>	<u>Bench</u>
9/18/80	Openings Smith 766 Gardner 810	655-867	773-793
9/19/80	Gardner 871	868-954	949-953 954-960
9/22/80	Gardner 972	961-1105	985-1020 1047-1052 1088-1090
9/23/80	Mack 1108 Tschudy 1126 Vermeersch 1166	1106-1246	1114-1122 1246-1267
9/24/80	Vermeersch 1288	1267-1469	1269-1287
9/25/80	Vermeersch 1472	1470-1665	
9/26/80	Stec 1668 Bookchin 1747 Schreiberg 1807	1666-1841	1682-1685
9/29/80	Schreiberg 1855 Vericker 1917 Machtinger 1938 Gray 1973	1842-2050	
9/30/80	Decker 2053 Griffin 2091 Horn 2127 Conrad 2190	2051-2232	2111-2117
10/1/80	Shackelford 2235 Lander 2362	2233-2373	
10/2/80	Cohen 2395 Weaver 2402 Stuller 2455 Smith 2497	2374-2544	2408-2414
10/3/80	Smith 2547	2545-2683	
10/6/80	Smith 2689	2684-2827	2827-2835
10/7/80	Acquital Motion 2836 Miller Opening 2882 Preusse 2919 Sizoo 2970	2826-3008	

62-118045-319

ENCLOSURE

10/8/80	Moore 3021 Gray 3095 Evans 3154	3009-3164	3128-3121
10/9/80	Branigan 3180 Gordon 3319 Berley 3334	3165-3346	3226 3241-3268 3268-3271 3310-3311 3324
10/10/80	Meyer 3350 Cohn 3361 Litrento 3481 Grathwohl 3537	3348-3572	3486-3489 3504-3507
10/14/80	Grathwohl 3576 Bishop 3697 Burke 3725 Rogge 3732	3573-3756	
10/15/80	Brownell 3759 MacLennon 3838 Helgeson 3867 Linberg 3886 Ryan 3912	3757-3975	3890-3891 3904-3909 3915A-3924 3926 3975A-3980
10/16/80	Ryan 3988 DeLoach 4103 Blakey 4419A	3981-4236	4031-4039 4056-4060 4069 4077-4092 4095-4097 4101 4119-4120 4161-4162 4193
10/17/81	Yeagley 4239 O'Neill 4311 Bowers 4360 Reagan 4371 Beckwith 4405	4237-4472	4419 4443-4448 4352 4355 4392 4473-4485
10/20/80	Beckwith 4488 Worthington 4524 Barron 4564	4486-4647	4494-4495A 4504-4520 4537-4546 4552 4589-4590 4618-4621 4626-4643
Greenberg/Gray-7441			

62-118045-319

ENCLOSURE

10/21/80	Parsons 4651 LaPrade 4685 Barron 4724	4648-4842	4659 4665-4684 4716-4716B 4732-4743 4756-4757 4759 4785 4805 4835 4841
10/22/80	Barron 4851 Felt 4866	4843-5074	4939-4940 4990-4993 5024 5058-5059 5065-5068 5075-5076
10/23/80	Felt 5077	5076A-5232	5101-5102 5105-5106 5138 5152-5153 5162-5163 5205-5207 5215-5218
10/24/80	Hotis 5263 Hoerber 5404	5233-5430	5249-5254 5334-5335 5366-5373 5375-5403 5407-5408
10/27/80	Hotis 5466 Vorenberg 5609	5431-5653	5537 5634-5636 5641-5642
10/28/80	Clark 5659 Mitchell 5742 Kleindienst 5792	5654-5833	5704-5705B 5706-5708 5733 5736-5741 5827-5832 5834-5842
10/29/80	Smith 5845 Nixon 5909	5843-5939	5865-5869 5898-5901 5907 5937-5938
10/30/80	Katzenbach 5943	5940-6106	6028-6040
10/31/80	Arguments Instructions	6107-6300	6249-6250
11/4/80	Closing Arguments	6361-6546	6402 6519

62-118045-319

ENCLOSURE

11/5/80

Instructions

6555-6653

6547-6554

6609-6613

6626-6643

11/6/80

Verdict

6659-6664

6654-6658

12/15/80

Sentencing

The separately bound bench conferences, are in four volumes
with the following page ranges:

773-3226

3241-4621

4626-5373

5375-6658

Greenberg/Gray-7443

Memorandum



Exec AD Adm. _____
 Exec AD Inv. _____
 Exec AD LES _____
 Asst. Dir.: _____
 Adm. Servs. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Legal Coun. _____
 Plan. & Insp. _____
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Off. of Cong. & Public Affs. _____
 Telephone Rm. _____
 Director's Sec'y _____

ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED
 DATE 05-12-2009 BY 65179 dmh/baw/sbs

To : Mr. Finzel

Date FEB 20 1981

From : J. L. Tierney

Subject : U. S. vs. FELT ET AL.
 TRIAL TRANSCRIPT

PURPOSE: To place copy of trial transcript and exhibits on record, and to arrange for their location as reference material.

RECOMMENDATION: That the transcript, exhibits, and their related lists be placed on record as an enclosure to this memorandum, but be permanently charged out to the Document Classification Unit (Room 6380).

DETAILS: Attached as an enclosure is a copy of the transcript of trial in captioned case, including the exhibits entered into evidence which appear as part of the public record.

The transcript runs from page 655 on September 18, 1980, through page 6664 on November 6, 1980 and is bound into 33 separate volumes, each the equivalent of one day's proceedings. The transcript is complete except for pages 1 - 654 which covers jury selection and 6301 - 6360 which covers a session on November 3, 1980, on jury instructions.

The bench conferences which were sealed by the court for national security reasons are bound into four separate volumes. These separate volumes follow the same pagination as the basic transcript.

Exhibits are bound into four volumes for the government, eleven volumes for Mr. Felt, and five volumes for Mr. Miller.

- 1 - Mintz - (Enclosure)
- 1 - Finzel - (Enclosure)
- 4 - Dean - (Enclosure)
 - (1 - [redacted] (Enclosure)
 - (1 - [redacted] (Enclosure)
 - (1 - [redacted] (Enclosure)
- 3 - Hall - (Enclosure)
 - (1 - [redacted] Enclosure)
 - (1 - [redacted] (Enclosure)

Enclosures (3)

62-118045-319
 APR 11 1981
 JCH

CONTINUED - OVER

Memo to Mr. Finzel
Re: U. S. vs. Felt, Et Al.
Trial Transcript

Exhibits bearing classification markings are stamped as either declassified or unclassified with redactions by Robert L. Keuch, Associate Deputy Attorney General. Declassification actions taken were on the authority of Attorney General Civiletti.

Accompanying the exhibits are copies of the legal size inventories of exhibits in the order in which they were marked for identification and received in evidence, noting the witness to whom they relate. There are three inventories, one each for the government, Felt and Miller. There is also a typed list of government exhibits arranged according to the witness testifying to the exhibit.

Not every exhibit listed on the inventories is copied and included in the exhibit set for two reasons. If an exhibit was marked for identification but never received in evidence it is not included in the record and has not been copied, although it remains listed on the inventory. Frequently more than one party planned to introduce the same document as an exhibit. The document then appears on more than one inventory, but was received in evidence with only one exhibit number and appears only once in the record. The copies of the exhibits in this set were made from the actual court record. A few additional excisions or redactions were made by the Department to correct mistakes, and substitutions were then made in the court record.

Also attached is a table of contents outlining the transcript on a daily basis, listing the date, witnesses appearing with beginning page, page range for that day, and bench conferences for that day which have been removed and bound separately.

The exhibits are of immediate interest to personnel currently taking classification action on FBI records. Both transcript and exhibits are of interest to personnel handling Freedom of Information-Privacy Acts requests, civil discovery, and defense to civil litigation involving the FBI. It will therefore be preferable to have the set accessible as a reference in a central location rather than held as a bulky in a remote location. Maintaining the set in the Document Classification Unit has been coordinated with the Chief of the Document Classification and Review Section.

Subject

FBI Participation in Discovery in the
Kearney, Gray, Felt and Miller Cases

Date

20 JUL 1982

To

Thomas H. Bresson
Assistant Director
Records Management Division

From

Larry L. Simms
Deputy General Counsel
Office of Legal Counsel

This responds to your request of December 18, 1981 for advice on whether to end the moratorium on destruction of security related records which the Federal Bureau of Investigation has observed since January 16, 1978. We have received comments from the Torts Branch of the Civil Division (attached) and the Criminal Division. Both object to any lifting of the moratorium. The Federal Programs Branch of the Civil Division, which is handling American Friends Service Committee v. Webster, No. 79-1655 (D.D.C.), is indifferent because of the outstanding injunction in that case. This Office has no institutional interest in this matter and therefore defers to the judgment of the Civil and Criminal Divisions, since they are the litigating divisions who will have to produce any documents that are requested.

[redacted] Unit Chief, Field Coordination, Appeals Unit (FBI) [redacted] has expressed some dissatisfaction with these decisions. Since this Office is not responsible for the litigation, we cannot determine whether it would be appropriate to destroy the documents with which he is concerned. We recommend that any further correspondence be directed specifically to the litigating divisions and not to this Office.

b6
b7c

cc: John J. Farley, III
Director, Torts Branch
Civil Division

William C. Bryson
Chief, Appellate Section
Criminal Division

Vincent M. Garvey
Assistant Branch Director
Federal Programs Branch
Civil Division

NOT RECORDED

26 JUL 26 1982

15 JUL 18 1982

Greenberg/Gray-7446

Original Filed In

4/10

JJF:LLGregg:hmr

March 2, 1982

MEMORANDUM

TO: Mr. Larry L. Simms
Deputy Assistant Attorney General
Office of Legal Counsel

FROM: John J. Farley, III
Director, Torts Branch
Civil Division

SUBJECT: FBI - Document Destruction

Your memorandum of February 11, 1982, requests our comments on the Bureau's proposal to lift a moratorium on the destruction of certain security-related records. This moratorium was imposed by your office in view of the pendency of criminal proceedings against former FBI officials Kearney, Gray, Felt and Miller.

First of all, the criminal case against Messrs. Felt and Miller remains "pending" since an appeal has been filed. Moreover, the above individuals currently are defendants in a civil suit pending in the United States District Court for the Southern District of New York captioned Judith Clark, et al. v. United States, et al., 78 CIV 2244 MEL (S.D. N.Y.), which arises out of the Weather Underground and Weather Fugitive investigations. This case is primarily handled by the United States Attorney. That office should be consulted fully before any documents are destroyed. It might be noted, however, that it is likely that any documents retrieved in connection with the criminal cases would be deemed relevant to the related civil case, in view of the broad relevancy concept embodied in the Federal Rules of Civil Procedure.

Aside from the above, you should be aware that this Division handles several cases which challenge national security investigations conducted by the Bureau over the years. These include investigations of the Black Panther Party, National Lawyers Guild, Socialist Workers Party,

62-118045-
ENCLOSURE⁷

Greenberg/Gray-7447

Jewish Defense League, Peoples Coalition for Peace and Justice, Students for a Democratic Society, East Coast Conspiracy to Save Lives and numerous other groups. We are concerned that any destruction of security-related records might hinder our ability to defend the governmental and individual interests we represent in these lawsuits. It is perhaps significant to note that the Legal Counsel Division of the FBI, with which we work closely in defending these cases, does not appear to have been consulted on the question of resuming destruction. Its view would be helpful.

At the present time we are inclined to recommend against destruction of any security-related documents. At the very least, in the event the Bureau is permitted to commence normal destruction of records, provision should be made to ensure that this Division is advised in advance of any proposed destruction in order that our litigation interests and obligations might be protected. Various document retrieval and destruction programs notwithstanding, the destruction of relevant documents of potential evidentiary value could adversely impact on presently pending cases, particularly when they are subject to non-destruct orders.

cc: Mr. W. Donald Bonds
Deputy Assistant Attorney General
Civil Division

Mr. Vincent M. Garvey
Assistant Branch Director
Federal Programs Branch
Civil Division

Memorandum



Exec AD Adm. _____
 Exec AD Inv. _____
 Exec AD LES _____
 Asst. Dir.: _____
 Adm. Servs. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Legal Coun. _____
 Plan. & Insp. _____
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Off. of Cong. & Public Affs. _____
 Telephone Rm. _____
 Director's Sec'y _____

To : Mr. Finzel

Date FEB 20 1981

From : J. L. Tierney

Subject : U. S. vs. FELT, ET AL.
FOREIGN SOURCE DOCUMENTS -
IN CAMERA SUBMISSION

ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED
 DATE 05-12-2009 BY 65179 dmh/baw/sbs

PURPOSE: To record status of documents submitted to court
in camera and to arrange regular follow-up until
 they are returned to FBI control.

RECOMMENDATION: That Records Management Division recontact
 Departmental Attorney Frank Martin on 05
 about September 1, 1981, and thereafter at six month intervals
 until the documents are returned to FBI control.

APPROVED: _____
 Director _____
 Exec. AD-Adm. _____
 Exec. AD-Inv. _____
 Exec. AD-LES _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Plan. & Insp. _____
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Off. of Cong. & Public Affs. _____

DETAILS: During discovery proceedings in 1979 approximately
 1200 documents (copies) relating to SDS, Weatherman,
 and the WEATHFUG organization were isolated. All contained
 information received from foreign sources which had no
 relevance to the issue of foreign involvement in the Weatherman.

The documents were isolated and turned over to
 Departmental Attorneys John W. Nields, Jr. and Francis J.
 Martin so they could be prepared to defend against the demand
 from defense counsel that all foreign source information
 be made available to them during discovery.

The Attorney General claimed executive privilege
 on all foreign source information which was concededly relevant
 to the issue of foreign involvement. The Department found
 it necessary, however, to submit those 1200 foreign source
 documents not relevant to the issue to the court in camera
 (and ex parte).

The court reviewed the 1200 documents and agreed
 they were not relevant and did not need to be made available
 to defense counsel during discovery.

1 - Finzel
 1 - Dean (Lang)

JET:jch (5)

CONTINUED - OVER

64 OCT 27 1981

HODGEN
1410 SEP 18 1981

Memo to Mr. Finzel
Re: U. S. vs. Felt, et al.
Foreign Source Documents -
In Camera Submission.

At conclusion of the trial I requested Messrs. Nields and Martin to retrieve the documents from the court. I suggested either the Department or the FBI could retain the set intact in case it became an issue on appeal. After considering the request, they refused. They stated they would retrieve the documents if the court requested it, but they would not approach the court to suggest it.

The documents are likely to be handled securely by court personnel until the passage of time or change in personnel dulls the court's perception of their sensitivity. They should not be allowed to remain even as part of the sealed portion of the court record beyond any arguable need for their retention.

The appeal is not likely to be argued in the D. C. Circuit until the Fall of 1981.

Mr. Martin, now assigned to the Appeals Section, Criminal Division () should be contacted on or about September 1, 1981, and thereafter at six month intervals until the documents are returned to FBI control.

b6
b7c

Memorandum



Exec AD Adm. _____
Exec AD Inv. _____
Exec AD LES _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Off. of Cong. & Public Affs. _____
Telephone Rm. _____
Director's Sec'y _____

To : Mr. R. P. Finzel

Date 4/6/81

From : E. J. O'Malley

Subject : U. S. vs. FELT, et al.
Foreign Source Documents -
In Camera Submission

W. Mark Felt

PURPOSE:

To advise of change in location of sensitive documents previously reported to have been left in the possession of the trial judge.

RECOMMENDATION:

None, for information.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs

b6
b7C

- 2 - Mr. R. P. Finzel
(1 - Mr. Dean, attention ☐)
1 - Mr. J. L. Tierney

JLT:ifc (4)

246
60 APR 27 1981

62-118045-320

3 APR 9 1981

(CONTINUED - OVER)

Greenberg/Gray-7451

FBI/DOJ

Memorandum E. J. O'Malley to Mr. R. P. Finzel

Re: U. S. vs. Felt, et al.

Foreign Source Documents -

In Camera Submission

DETAILS:

Memorandum J. L. Tierney to Mr. Finzel dated 2/20/81, captioned as above, noted the continued retention by the trial judge of approximately 1200 FBI documents containing foreign source information relevant to Weatherman but not relevant to the involvement of foreign powers in that organization. The Department had been unwilling despite our request to retrieve these sensitive documents from the court.

On 4/6/81, Departmental Attorney Francis J. Martin advised that all documents containing SCI or foreign source information had been retrieved from the judge's chambers and placed in the possession of Mr. Jerry Rubbino, Security Officer of the Department of Justice.

Jm | The recommendation in referenced memorandum that Records Management Division contact Mr. Martin on or about 9/1/81 continues. Although the possibility of accidental mishandling of the foreign source documents is all but eliminated by Mr. Rubbino having possession of them, their extreme sensitivity requires the same follow-up action of contacting Mr. Martin with a view toward their eventual return to FBI control.

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORM

PAGE 1 OF 3	CLASSIFICATION UNCLAS		PRECEDENCE PRIORITY	
DATE 4/15/81				
*F14E*4EPP AF0EDE HQ H0144 *H0YU0P 152209Z APR 81				
START HERE				
FM	FM DIRECTOR, FBI			
TO	TO ALL FBI FIELD OFFICES PRIORITY			
BT				
14	UNCLAS			
	ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 05-12-2009 BY 65179 dmh/baw/sbs			
	BUREAUWIDE INFORMATION PROGRAM {81-12}			
12	PRESIDENTIAL PARDON OF W. MARK FELT AND EDWARD S. MILLER			
	ON APRIL 15, 1981, PRESIDENT RONALD W. REAGAN ISSUED THE			
10	FOLLOWING STATEMENT:			
	"PURSUANT TO THE GRANT OF AUTHORITY IN ARTICLE II, SECTION			
8	2 OF THE CONSTITUTION OF THE UNITED STATES, I HAVE GRANTED FULL			
	AND UNCONDITIONAL PARDONS TO W. MARK FELT AND EDWARD S. MILLER.			
6	DURING THEIR LONG CAREERS, MARK FELT AND EDWARD MILLER			
	SERVED THE FEDERAL BUREAU OF INVESTIGATION AND OUR NATION WITH			
4	GREAT DISTINCTION. TO PUNISH THEM FURTHER--AFTER THREE YEARS			
	OF CRIMINAL PROSECUTION PROCEEDINGS--WOULD NOT SERVE THE ENDS			
2	OF JUSTICE.			
DO NOT TYPE MESSAGE BELOW THIS LINE				
APPROVED BY	DRAFTED BY	DATE	ROOM	TELE EXT
JVA	JVA:PEB	4/15/81	7350	

- 1 - MR. COLWELL
1 - MR. MULLEN
1 - MR. OTTO
1 - EACH ASSISTANT DIRECTOR
1 - MR. YOUNG

- 1 - [REDACTED]
1 - MR. DIVAN
1 - MR. BRUEMMER
1 - MR. STEEL
1 - MR. ROIN
1 - [REDACTED]

b6
b7C

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS CENTER

030426H
APR - 34081

MAY 7 1981 APR 16 1981

DO NOT FILE WITHOUT COMMUNICATIONS STAMP

PERC. AND UNIT

FBI/DOJ

33 MAY 19 1981

COPY RETAINED IN
PERSONNEL RECORDS UNIT

DO NOT TYPE PAST THIS LINE

321

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS MESSAGE FORM

2

CONTINUATION SHEET

PAGE TWO DE HQ 0144 UNCLAS

THEIR CONVICTIONS IN THE U.S. DISTRICT COURT, ON APPEAL AT THE TIME I SIGNED THE PARDONS, GREW OUT OF THEIR GOOD FAITH BELIEF THAT THEIR ACTIONS WERE NECESSARY TO PRESERVE THE SECURITY INTERESTS OF OUR COUNTRY. THE RECORD DEMONSTRATES THAT THEY ACTED NOT WITH CRIMINAL INTENT, BUT IN THE BELIEF THAT THEY HAD GRANTS OF AUTHORITY REACHING TO THE HIGHEST LEVELS OF GOVERNMENT.

AMERICA WAS AT WAR IN 1972, AND MESSRS. FELT AND MILLER FOLLOWED PROCEDURES THEY BELIEVED ESSENTIAL TO KEEP THE DIRECTOR OF THE FBI, THE ATTORNEY GENERAL, AND THE PRESIDENT OF THE UNITED STATES ADVISED OF THE ACTIVITIES OF HOSTILE FOREIGN POWERS AND THEIR COLLABORATORS IN THIS COUNTRY. THEY HAVE NEVER DENIED THEIR ACTIONS, BUT, IN FACT, CAME FORWARD TO ACKNOWLEDGE THEM PUBLICLY IN ORDER TO RELIEVE THEIR SUBORDINATE AGENTS FROM CRIMINAL ACTIONS.

FOUR YEARS AGO THOUSANDS OF DRAFT EVADERS AND OTHERS WHO VIOLATED THE SELECTIVE SERVICE LAWS WERE UNCONDITIONALLY PARDONED BY MY PREDECESSOR. AMERICA WAS GENEROUS TO THOSE WHO REFUSED TO SERVE THEIR COUNTRY IN THE VIETNAM WAR. WE CAN BE

Greenberg/Gray-7454

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

3

CONTINUATION PAGE

PAGE THREE DE HQ 0144 UNCLAS**UNCLAS

NO LESS GENEROUS TO TWO MEN WHO ACTED ON HIGH PRINCIPLE TO
BRING AN END TO THE TERRORISM THAT WAS THREATENING OUR NATION."

BT

1

DO NOT WRITE IN THESE SPACES

Greenberg/Gray-7455

Memorandum



Exec AD Inv. _____
 Exec AD Adm. _____
 Exec AD LES _____
 Asst. Dir.:
 Adm. Servs. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Legal Coun. _____
 Plan. & Insp. _____
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Public Affs. Off. _____
 Telephone Rm. _____
 Director's Sec'y _____

To: Mr. Colwell

TL# 235

Date 4-9-81

From: R. P. Finzel

ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED
 DATE 05-12-2009 BY 65179 dmh/baw/sbs

Subject: UNITED STATES OF AMERICA v.
W. MARK FELT,
EDWARD S. MILLER
 PROTECTION OF NATIONAL SECURITY INFORMATION

PURPOSE: To advise of a meeting on 4-8-81 of representatives of the CIA, NSA, DOJ, and the FBI, concerning security of documents used in the Felt/Miller trial.

RECOMMENDATION: None, for information.

APPROVED: _____
 Director _____
 Exec. AD-Adm. _____
 Exec. AD-Inv. _____
 Exec. AD-LES _____
 Adm. Serv. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Legal Coun. _____
 Plan. & Insp. _____
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Off. of Cong. & Public Affs. _____

DETAILS: On 4-8-81, Mr. D. Jerry Rubino, Security Programs Manager, DOJ, advised that the defense attorneys for Mr. Felt and Mr. Miller had seven safes in their law office containing documents with National Security Information which were used during the trial and were under a protective order of the court. In December, 1980, at the conclusion of the trial, the only individual having the combination for one of the safes resigned and the law firm had this safe drilled open by the Criminal Division of the DOJ. Mr. Rubino was not advised of this until March, 1981. The safe had remained unlocked for 75 days in the law office with no apparent security or protection for the classified documents. All personnel of the law office, the cleaning personnel, and any individuals having access to the building could have had access to the information in the open safe. One document found in the open safe was Sensitive Compartmented Information not authorized under court order to be in the hands of the defense. This document was seized by Mr. Rubino and is presently in his custody.

1 - Mr. Colwell
 1 - Mr. O'Malley
 1 - Mr. Mintz
 1 - Mr. Finzel
 1 - Mr. Dean
 1 - Mr. Scherrer
 1 - Mr. Tierney
 1 - Mr. Litzenburg

1 - Mr. James
 1 - Mr. Butts
 1 - Mr. Steele

JLB:jac/jml
 (12)

(CONTINUED-OVER)

Greenberg/Gray-7456

FBI/DOJ

Memorandum from R. P. Finzel to Mr. Colwell
Re: United States of America v.
W. Mark Felt,
Edward S. Miller
Protection of National Security Information

DOJ Attorney, Frank Martin, who is the prosecutor in Felt/Miller, wants all documents to be moved to the Court of Appeals for availability purposes with the exception of those maintained by the defense team.

Mr. Rubino does not agree with Mr. Martin concerning the custody of the classified documents and indicated he plans to make the following recommendations to the Attorney General:

- 1). That court permission be requested for the return of all documents held by the Felt/Miller defense team to Government control.
- 2). That all documents be made reasonably available to the defense attorneys and the Appeals Court.
- 3). That the Appeals Court be requested to adopt security procedures for the protection of classified information in the Federal Courts as authorized by Chief Justice of the United States, Warren Burger, pursuant to the Classified Information Procedures Act of 1980.
- 4). That the Appeals Judge be requested to appoint a member of the NSA as a Court Security Officer with the CIA and FBI providing individuals as points of contact for security reasons.
- 5). That the Attorney General recommend sanctions against the law firm for failure to protect classified information in accordance with the Court's protective order.

Mr. Rubino indicated he would be seeking FBI^{CIA and NSA} assistance in conducting a damage assessment on the possible compromise of the classified documents in the near future.

Greenberg/Gray-7457

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORM

077

PAGE 1 OF 2	DATE 4/15/81	CLASSIFICATION UNCLAS	PRECEDENCE IMMEDIATE	PRIORITY
*F077000 AF0TDE HQ H0077 *H4YU0 151901Z APR 81				
START HERE				
FM	FM DIRECTOR FBI			
TO	TO ALL SACS FBI FIELD OFFICES IMMEDIATE LEGAL ATTACHES IMMEDIATE ALL LEGATS PRIORITY			
14	BT	ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 05-12-2009 BY 65179 dmh/baw/sbs		
12	UNCLAS			
10	PRESIDENTIAL PARDONS			
8	THE PRESIDENT ANNOUNCED TODAY THAT HE HAS GRANTED FULL AND UNCONDITIONAL PARDONS TO W. MARK FELT AND EDWARD S. MILLER. A COPY OF THE STATEMENT MADE BY THE PRESIDENT AT THE TIME OF THIS ANNOUNCEMENT WILL BE FURNISHED SEPARATELY TO YOUR OFFICE. I HAVE MADE THE FOLLOWING STATEMENT WHICH YOU MAY USE IN RESPONSE TO INQUIRIES CONCERNING THE PARDONS:			
6	"THIS ANNOUNCEMENT WILL BE WELCOME NEWS TO FBI EMPLOYEES THROUGHOUT THE COUNTRY. THIS BRINGS TO A CLOSE A DIFFICULT CHAPTER FOR THE FBI AND FOR THE FELT AND MILLER FAMILIES. WE ARE GRATEFUL FOR THE PRESIDENT'S ACTION."			
4				
2				
DO NOT TYPE MESSAGE BELOW THIS LINE				
APPROVED BY	DRAFTED BY RSY:NLS	DATE 4/15/81	ROOM 7116	TELE EXT. 235

DO NOT TYPE PAST THIS LINE

- 1 - EACH EXECUTIVE ASSISTANT DIRECTOR
- 1 - EACH ASSISTANT DIRECTOR
- 1 - [REDACTED]
- 1 - [REDACTED]
- 1 - MR. HOTIS
- 1 - MR. HOTIS
- 1 - MR. ROIN
- 1 - [REDACTED]
- 1 - MR. STEEL

b6
b7cFEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS CENTER

2347368 Greenberg/Gray-7458

APR 16 1981

DO NOT FILE WITHOUT COMMUNICATIONS STAMP

PERS. REC. UNIT

APR 27 1981

FBI/DOJ

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORM

PAGE 2

CONTINUATION SHEET

▶ START HERE
▼

BT

20

18

16

14

12

10

8

6

4

2

DO NOT TYPE PAST THIS LINE

DO NOT TYPE MESSAGE BELOW THIS LINE

Greenberg/Gray-7459

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/shs

RAYMOND EUGENE CAHILL

WASHINGTON, D.C. 20036

ASSOCIATE

b6

May 1, 1981

AF

Legal Coun. —
Plan. & Insp. —
Rec. Mgnt. —
Tech. Servs. —
Training —
Public Aff. —
Telephone Rm. —
Director's Sec'y —

FBI/DOJ

Richard Cohen
Columnist
The Washington Post
1150 15th St., N.W.
Washington, D.C. 20071

Dear Sir:

Felt W. MARK

Your column in the Washington Post on April 22 concerning the Presidential pardons of Messrs. Felt and Miller -- aside from egregious grammatical error (perhaps the fault of your editor, who also dressed up the column with photographs and captions reflecting his own and the newspaper's bias) -- revealed your lack of understanding of the facts and the law with respect to the utterances of the two Presidents of the U. S. and the performance of the FBI and its agents in the past.

The actual statements made and positions taken by Presidents Nixon and Reagan were right as rain (and in harmony with the positions on this subject of previous Presidents, except Jimmie Carter, going back to President Roosevelt). The performance of the FBI in the field of National Security has been, on the whole, magnificent. And the FBI has adhered to the law -- admirably. You know, or should know, that this "law unto itself" calumny you repeated is a cliché employed by ultra-liberals and others of questionable motives who have smeared the Bureau and would destroy its effectiveness.

Messrs. Felt and Miller, in carrying out their sworn duties -- lawfully, your fallacious column to the contrary notwithstanding -- indeed served the FBI and their country with distinction and honor, as former President Nixon unerringly testified during their trial and as President Reagan accurately attested when conferring his unsolicited, unconditional pardons, exonerating them.

You have an interesting style. I read you regularly for that, frequently find you amusing. But your sophistic treatment of those whom you perceive to be your political or philosophical enemies unveils a dark side of Richard Cohen bound to be disappointing to anyone having a decent regard for the truth of a matter, for fair play.

I appeal to you to join the errant Washington Post in its desperate present effort to regain credibility. And if I didn't believe that you offer a better promise of success in this regard than does the Post, I wouldn't bother to write you this letter.

18 MAY 18 1981

NOT RECORDED Very truly yours,

JUN 16 1981

Raymond E. Cahill

REC/1

EXP. PROC. #740
5/15/81

18 MAY 18 1981

ORIGINAL FILED IN 94-8-6-1786

59 JUN 10 1981

REC/1

Memorandum



Exec AD Adm. _____
 Exec AD Inv. _____
 Exec AD LES _____
 Asst. Dir.: _____
 Adm. Servs. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Legal Coun. _____
 Plan. & Insp. _____
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Off. of Cong. & Public Affs. _____
 Telephone Rm. _____
 Director's Sec'y _____

To : Mr. Finzel **F/LET**

Date 7/30/81

From : L. E. Dean **LET**

ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED
 DATE 05-12-2009 BY 65179 dmh/baw/sbs

Subject : UNITED STATES vs.
 L. PATRICK GRAY, III,
 W. MARK FELT, AND EDWARD S. MILLER

PURPOSE: To develop a guide for access to and use of materials developed in the criminal discovery of captioned case.

RECOMMENDATION: None, for information.

APPROVED:	Adm. Servs. _____	Laboratory _____
	Crim. Inv. _____	Legal Coun. _____
Director _____		Off. of Cong. & Public Affs. _____
Exec. AD-Adm. _____	Ident. _____	Rec. Mgnt. F/LET
Exec. AD-Inv. _____	Inspection _____	Tech. Servs. _____
Exec. AD-LES _____	Intell. _____	Training _____

DETAILS: In April of 1978, Grand Jury indictments were returned against former Acting Director L. Patrick Gray, former Associate Director W. Mark Felt, and former Assistant Director Edward S. Miller for conspiring to violate the Fourth Amendment rights of friends and relatives of the Weather Underground. The alleged conspiracy occurred during the period of May, 1972, until May, 1973. Discovery was carried on by the same special task force that handled the criminal discovery of former New York Squad 47 Supervisor John J. Kearney. Kearney's prosecution proceedings were dropped in favor of prosecuting Messrs. Gray, Felt, and Miller. Discovery continued until the trial of Felt and Miller, which commenced 9/15/80. Messrs. Felt and Miller were later convicted by jury, fined by the presiding judge, and later pardoned by President Reagan. The trial of Mr. Gray was severed from Felt-Miller in early 1979, and prosecution was dropped in December, 1980. The on-record material retained during criminal discovery in this overall matter is filed in 62-118045. The actual work-related products of the special are stored in Room 4859. The transcript and exhibits are located in Room 6380.

Criminal discovery in the captioned matter was handled both formally and informally. Those formal matters would be filed in 62-118045. However, at times, there were over-the-phone requests which were never recorded on paper. Therefore,

- 1 - Mr. Finzel
- 1 - Mr. Dean
- 1 - [Redacted]
- 1 - [Redacted]

1981

b6
 b7C

23 AUG 4 1981

PHL/DJR:vae
 (5)

(CONTINUED - OVER)

Greenberg/Gray-7461

FBI/DOJ

Memorandum of L. E. Dean to Mr. Finzel
Re: United States vs.
L. Patrick Gray, III,
W. Mark Felt, and Edward S. Miller

not all the processed copies of files and materials located in Room 4859 could be explained by a review of this file. Hence, it is imperative to briefly summarize why certain aspects of this discovery were done.

The processing of the Venceremos Brigade main file, for example, was limited to the serials in the file that actually pertained to individuals who had been, or later became, members of the Weathermen.

The files on Al Fatah and [redacted] were processed in their entirety by Civil Discovery Review Unit #1, specifically to show how a "foreign" terrorist organization was investigated by the Bureau. More importantly, it was to release to the defense the surreptitious entry authorized by L. Patrick Gray in September of 1972 [redacted]. This was considered vital for the defense of Messrs. Felt and Miller during their trial.

b6
b7C

By way of background, in July of 1966, the Director stated that he would no longer approve of the "black bag job" technique. This is known as the so-called "Hoover cut-off memo." After Director Hoover died in May of 1972, many Bureau supervisors, including Mr. Miller, were interested in reimplementing this technique. Mr. Miller personally queried Acting Director Gray regarding this in a private conversation. Mr. Miller has since contended that Mr. Gray was receptive to his suggestion, and when [redacted] was approved in September of 1972 after their private discussion, he felt the Bureau was in fact "back in business" of approving this technique.

b6
b7C

Cabinets 4, 5, 6, and 16 (Drawer 5) contain tickler folders seized in August through September of 1976 by the DOJ from IS-2 Section, Intelligence Division. Basically, these folders are from Mr. Preusse's and Mr. Shackelford's offices. In this instance, the defense was given an inventory of all the folders and was told by the Department to select only those folders it had an interest in seeing. The folders the defense selected were processed only if the contents of the folder had not been previously processed in their other discovery requests.

Specific discovery requests caused the main files on the SDS, Weathfug, Penbom, Capbom, and ITT cases, and the individual files on Weathermen subjects to be partially processed. Those requests can be located in the respective case's file. These main files were processed only within a time frame the defense requested, which varied according to each request.

The redacting of all files in discovery was limited to protecting sources, confidentiality, on-going investigations, and information which could cause undue embarrassment to a third party. As a condition precedent to affording defense counsel access to file materials, the Department required all defense attorneys to agree to a protective order from the Court. This order forced the defense to inform

Memorandum of L. E. Dean to Mr. Finzel
Re: United States vs.
L. Patrick Gray, III,
W. Mark Felt, and Edward S. Miller

Government counsel and the Court in advance of any intention to use classified material during the trial. After such notification, the Government would either declassify the material, seek an in-camera ruling from the Court denying relevance, or agree to a stipulation. Several stipulations were made and these can be located among the trial exhibits in Room 6380.

In addition, at no time were documents redacted solely because they were classified. Therefore, several documents were prepared for the trial in a still classifiable version, but only those which were actually made part of the exhibits were declassified. The declassification was on the authority of the Attorney General, and the trial exhibits have been marked by DOJ personnel to reflect this.

All these files were reviewed inside Bureau space by defense counsel who had been granted TS clearances by the Attorney General. Defense counsel then selected specific documents out of these file reviews. Later, they submitted a list of approximately 1,000 documents they wanted delivered to them. These documents can be found in packages numbered 84 through 130 in Cabinets 1, 2, and 3.

The packages that were actually delivered to the defense are contained in Room 4859, Cabinets 1, 2, and 3. The total number of packages delivered to DOJ is 232. Most deliveries to defense counsel were by DOJ attorneys. The FBI records will show several sets of documents delivered to DOJ which indicates delivery to defense counsel was intended. These packages were made up from requests by the defense and the Department. All the packages are numbered on the receipt which is attached to the front of the package. The receipt also explains briefly what is contained therein and, in some cases, an inventory of the package. The first series of packages, numbered 1 through 19, and the second series of packages, numbered 1 through 49, represent the defense's first set of interrogatories and requests following their indictment. All the other packages represent the defense or Department requests which were either formal (on paper) or over-the-phone.

There came a point in the discovery that the defense was allowed further access to the redacted portions of certain serials. With the least amount of excisions allowable, certain packages were delivered to the Department's vault for defense counsel access. These packages are marked "Vault" or have an asterisk on the inventory to designate that they were vault copies. Referenced inventory is an attachment to the J. L. Tierney memorandum to Mr. Finzel, 12/1/80, captioned "U. S. vs. Kearney."

An index to all the delivered packages is located in Room 4859, Cabinet 3, Drawer 5. This index is considered as "work papers" for this litigation file and is maintained as a bulky exhibit in this record. The index is made up of 3x5 cards placed in five boxes marked A, B, C, D, and E. Boxes A through E contain cards that represent every serial or communication processed in the delivered packages.

Greenberg/Gray-7463

(CONTINUED - OVER)

Memorandum of L. E. Dean to Mr. Finzel
Re: United States vs.
L. Patrick Gray, III,
W. Mark Felt, and Edward S. Miller

Each 3x5 card has listed on it the date of the communication, type of communication, the to and from, the package number it is located in, and sometimes the subject of the communication. For example, in boxes A through D, the cards are filed by what type of communication it is, e.g., abstract, airtel, briefing, CIA document, inspection write-up, lab report, letter, LHM, memorandum, monograph, note, report, and teletype. Box E is a listing of all documents which were delivered to the vault and are filed by date. The inventory is complete for all the delivered packages; however, a communication may have inadvertently been described as a memorandum, when in reality it is a letter. Cross-referencing the type of communication would be the appropriate way of determining if the communication was in discovery and what, if any, package it was delivered in. Box E, the vault index, contains many of the same documents that actually were received by defense counsel and some other documents that were processed for the first time. It should be noted that on some index cards, several package numbers will appear. This indicates that the document not only appears in different packages, but also that the document has probably been disclosed in different fashions. These different fashions were at times inadvertent and at other times specifically requested to be done so. In coupling the sets of indices with the delivered packages, the following observations could be made. First, it could be determined if a communication of any sort had been actually delivered to the defense, and second, in what package or packages it was delivered, and in what fashion it was redacted. These delivered packages represent only the materials the defense counsel received. Much more material was reviewed at FBIHQ that the defense never requested or received.

In summary, there is little, if any, future use for the cabinets that contain discovery material that was not delivered. The packages of discovery materials delivered may have some value in future civil litigation. Many of these packages contain answers to general questions which may have some value as the product of research into such areas as notice of use of the surreptitious entry technique (black bag job) outside the FBI.

Greenberg/Gray-7464

Memorandum



Exec AD Adm. _____
Exec AD Inv. _____
Exec AD LES _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Off. of Cong. & Public Affs. _____
Telephone Rm. _____
Director's Sec'y _____

To : Mr. Finzel

Date 9/15/81

From : L. E. Dean

Subject : U. S. vs. FELT, et al.

EXHIBIT: DOCUMENT CAMERA,
FOREIGN SOURCE DOCUMENTS -
IN CAMERA SUBMISSION

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs

PURPOSE: To record status of certain documents and camera belonging to the FBI.

RECOMMENDATION: That Records Management Division personnel recontact Departmental Attorney Frank Martin on or about 1/1/82, and thereafter at regular intervals until this matter is resolved.

APPROVED: _____
Director _____
Exec. AD-Adm. _____
Exec. AD-Inv. _____
Exec. AD-LES _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Inspection _____
Intell. _____
Laboratory TK/RS
Legal Coun. _____
Off. of Cong. & Public Affs. _____
Rec. Mgnt. my
Tech. Servs. _____
Training _____



DETAILS: During discovery proceedings in captioned matter, 1,200 documents (copies) relating to the Students For a Democratic Society, Weathermen, and the WEATHFUG organization were identified. All of the documents contained foreign source information. After being isolated, the documents were turned over to Departmental Attorney Francis J. Martin in anticipation of a demand from defense counsel for such material.

The Attorney General later claimed executive privilege on all foreign source information. The Department found it necessary, however, to submit the 1,200 foreign source documents to the court in camera and ex parte in order to sustain the claim of privilege. The court reviewed the documents and ruled the material need not be produced to defense counsel during discovery.

1 - Mr. Kelleher
(Attn:)
Room 3449, TL #241)

1 - Mr. Finzel
1 - Mr. Dean

1 -

b6
b7C

BRH:vae uae

(6)

64 OCT 27 1981

Greenberg/Gray-7465

(CONTINUED - OVER)

10 SEP 23 1981

SEVEN
AP-File 12-7

Memorandum of L. E. Dean to Mr. Finzel
Re: U. S. vs. Felt, et al.

Although the trial in this matter has been completed, there is an appeal pending. On 9/11/81, Departmental Attorney Martin was contacted in an attempt to determine the status of the above material. Mr. Martin stated that both the documents and a Bureau owned document camera were received in evidence during the trial. He stated that both the documents and the camera must remain intact in case this matter becomes an issue on appeal. He also advised that both the camera and the documents are being maintained in a secure manner.

Mr. Martin, Appeals Section, Criminal Division, DOJ, can be reached through telephone number

b6
b7C

Greenberg/Gray-7466

Memorandum



Exec AD Adm. _____
Exec AD Inv. _____
Exec AD LES _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Off. of Cong. & Public Affs. _____
Telephone Rm. _____
Director's Sec'y _____

To : Assistant Director **TABLED**
Records Management Division (RMD)

Date 1/12/82

From : L. E. Dean **UJD**

Subject : U. S. vs. **MARK** **FELT**, et al.

EXHIBIT: DOCUMENT CAMERA,
FOREIGN SOURCE DOCUMENTS -
IN CAMERA SUBMISSION

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs

PURPOSE: To record status of certain documents and camera belonging to the FBI.

RECOMMENDATION: That RMD personnel recontact Jerry Rubino, DOJ, at regular intervals until this matter is resolved.

APPROVED: Adm. Servs. _____ Laboratory _____
Crim. Inv. _____ Legal Coun. _____
Director _____ Off. of Cong. & Public Affs. **TABLED**
Exec. AD-Adm. _____ Ident. _____ Rec. Mgnt. _____
Exec. AD-Inv. _____ Inspection _____ Tech. Servs. _____
Exec. AD-LES _____ Intell. _____ Training _____

DETAILS: During discovery proceedings in captioned matter, 1,200 documents (copies) relating to the Students For a Democratic Society, Weathermen, and the WEATHFUG organization were identified. All of the documents contained foreign source information. After being isolated, the documents were turned over to Departmental Attorney Francis J. Martin in anticipation of a demand from defense counsel for such material.

The Attorney General later claimed executive privilege on all foreign source information. The Department found it necessary, however, to submit the 1,200 foreign source documents to the court in camera and ex parte in order to sustain the claim of privilege. The court reviewed the documents and ruled the material need not be produced to defense counsel during discovery.

- 1 - Mr. Kelleher
(Attn:
Room 3449, TL #241)
- 1 - Mr. O'Malley
(Attn: Mr. Joseph L. Tierney
Room 4825, TL #232)
- 1 - Assistant Director, RMD
- 1 - Mr. Dean
- 1 -
- 1 -

DRB:vae vce
(7)

35
03 1982

b6
b7C

(CONTINUED - OVER)

Greenberg/Gray-7480

FBI/DOJ

4-File
DM

Memorandum of L. E. Dean to Assistant Director, RMD
Re: U.S. vs. Felt, et al.

Although the trial in this matter has been completed, there is an appeal pending. It has been learned since our last contact with Frank Martin on 9/11/81, that he has been replaced in this matter by William Bryson.

On 1/6/82, Mr. Martin was telephonically contacted and advised that he was still in possession of the Bureau-owned document camera but no longer in possession of the above-described documents. He advised that the camera was no longer needed and could be returned to the FBI. The documents, he added, were maintained in the DOJ special file room under the supervision of Jerry Rubino.

On 1/6/82, Jerry Rubino, Director, Security Programs Staff, DOJ, was contacted and advised that the documents were being maintained by his section in a secure manner.

On 1/7/82, the Bureau document camera was obtained from Mr. Martin, for which he was provided a receipt (a copy of which is attached hereto). On 1/8/82, the camera was turned over to Mr. Barry L. Mones, Room 3449.

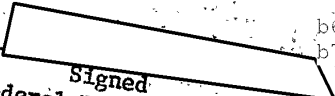
A Civil Discovery Review Unit #2 tickler has been set for 6/7/82 to recontact DOJ regarding the status of above documents.

Mr. Rubino can be reached at [] and Mr. Martin can be reached at []

b6
b7c

1/7/82
Washington, D.C.

Received this date from Francis J. Martin, Attorney, United States
Department of Justice, one document camera, serial number 4.

 b6
b7C
Signed
Federal Bureau of Investigation

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs

Greenberg/Gray-7482

Airtel

1/13/82

Director, FBI

ADIC, New York

U. S. vs. FELT, et al.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs

Forwarded under separate cover are two boxes containing original New York Field Office files previously submitted to FBIHQ for use in captioned matter. Review of these materials has been completed, and they are no longer needed by FBIHQ.

The field office files being returned are:

100-166899	176-96-1A Supplement
100-172368	176-96 Volumes 1-17
100-179220	100-179212 Volumes 1-9

2 - Package Copy

1 - Assistant Director, Records Management Division

1 - Mr. Dean

1 - [Redacted]

1 - [Redacted]

PEM/GSL:vae:ude
(9)

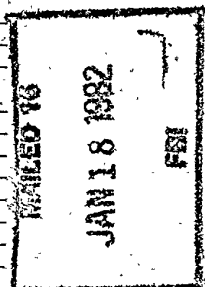
b6
b7C

62-118045-327

23 JAN 19 1982

NOTE: FBIHQ requested original New York Field Office files for utilization in connection with captioned matter. Inasmuch as these files are no longer needed by FBIHQ, they are being returned to New York.

Exec AD Inv. _____
Exec AD Adm. _____
Exec AD LES _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____



716543
716544

Greenberg/Gray-7483

MAIL ROOM ☒

Airtel

1/25/82

Director, FBI

ADIC, New York

U. S. vs. FELT, et al.

Forwarded under separate cover are two boxes containing original New York Field Office files previously submitted to FBIHQ for use in captioned matter. Review of these materials has been completed, and they are no longer needed by FBIHQ.

The field office files being returned are:

176-86 Volumes 1-18	100-176013 Volumes 1-3
176-86-1A Supplement	176-11 Volume 1
176-86-Sub 2	176-11-Sub A

(Handwritten initials)

2 - Package Copy

1 - Assistant Director, Records Management Division

1 - Mr. Dean

1 -

b6
b7C

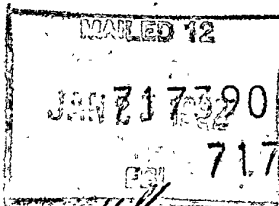
ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs

PRM/GSL:vae *vae*
(9)

NOTE: FBIHQ requested original New York Field Office files for utilization in connection with captioned matter. Inasmuch as these files are no longer needed by FBIHQ, they are being returned to New York.

62-118045-328

Exec AD Inv. _____
Exec AD Adm. _____
Exec AD LES _____
Asst. Dir.:
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____



JAN 28 1982

Greenberg/Gray-7484

L-7484

Memorandum



Exec AD Adm. _____
Exec AD Inv. _____
Exec AD LES _____
Asst. Dir.:
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Insp. _____
Intell. _____
Lab. _____
Legal Coun. _____
Off. Cong. & Public Affs. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Telephone Rm. _____
Director's Sec'y _____

To : Mr. E. J. O'Malley

Date 1/22/82

From : L. Tierney

Subject

b6
b7C
b7D

PURPOSE: To record response to [] request for assistance. b7D

RECOMMENDATION: None. For information and record purposes.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs

APPROVED

Director _____
Exec AD Inv. _____
Exec AD LES _____

Adm. Servs. _____
Crim. Inv. _____

Laboratory _____

Legal Coun. _____

Off. of Cong. & Public Affs. _____

Rec. Mgnt. _____

Tech. Servs. _____

Training _____

DETAILS: By letter dated [] to the Director, [] requested FBI assistance. On behalf of an unidentified counsel, he requested documentation from our records of the trial of W. Mark Felt and Edward S. Miller, particularly legal opinions, judgments, and their pardon.

b6
b7C
b7D

I discussed with [] the limited nature of our records of this matter which was investigated as well as prosecuted by the Department of Justice. He indicated an interest in the law which was ultimately applied to the case and at my suggestion will forward to his headquarters the transcript of the trial on 11/5/80 which consists of the court's instruction to the jury. I'm also furnishing a copy of the "STATEMENT BY THE PRESIDENT" released by the White House on 4/15/81 outlining the pardon.

1 - Mr. E. J. O'Malley
1 - Mr. L. Tierney

FEB 26 1982

10 FEB 18 1982

JLT:ifc (3)

(CONTINUED - OVER)

Greenberg/Gray-7485

FBI/DOJ

Memorandum from J. L. Tierney to Mr. E. J. O'Malley

Re: [REDACTED]

b6
b7C
b7D

I advised [REDACTED] we would be happy to discuss with him or some other [REDACTED] representative the problems encountered when sensitive records involving the national security become relevant to a criminal prosecution. I told him either I or SAC Paul V. Daly now assigned to the Albany Division were most familiar with the practical and the tactical considerations involved in protecting the present interests of an intelligence/law enforcement organization and balancing them against the rights of a criminal defendant who is a former member of the organization.

b6
b7C
b7D

He indicated his organization might request either SAC Daly or me to go to [REDACTED] where the present prosecution is located to consult with [REDACTED] representatives. I advised him I thought such a request would be favorably received as long as it was clear our function was to give them the benefit of our experience gained when undergoing a similar situation and to make smooth the handling of any FBI material which might become relevant during their prosecution.

b7D

It is noted that [REDACTED] situation differs from ours in that the

[REDACTED]
[REDACTED]. One prosecution is proceeding at this moment and 17 others are to follow.

b7D

Greenberg/Gray-7486

Jac

Airtel

2/9/82

Director, FBI

ADIC, New York

U. S. vs. BELT, et al.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs

Forwarded under separate cover are seven boxes containing original New York Field Office files previously submitted to FBIHQ for use in captioned matter. Review of these materials has been completed, and they are no longer needed by FBIHQ.

The field office files being returned are:

176-403A-Sub A Supplement
176-403A Volumes 1-33

[Handwritten signature in a circle]

7 - Package Copy

- 1 - Assistant Director, Records Management Division
- 1 - Mr. Dean
- 1 -
- 1 -

b6
b7C

PEM/GSL:vae *uhs*
(14)

62-118045-330

NOTE: FBIHQ requested original New York Field Office files for utilization in connection with captioned matter. Inasmuch as these files are no longer needed by FBIHQ, they are being returned to New York.

Exec AD Inv. _____
Exec AD Adm. _____
Exec AD LES _____
Asst. Dir.:
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

MAILED 5
FEB - 9 1982
FBI

715207
715208
715209
715210
715211
715212
715213

FEB 10 1982

Greenberg/Gray-7487

Airtel

2/22/82

Director, FBI

ADIC, New York

U. S. vs. Mark et al.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/shs.

Forwarded under separate cover are five boxes containing original New York Field Office files previously submitted to FBIHQ for use in captioned matter. Review of these materials has been completed, and they are no longer needed by FBIHQ.

The field office files being returned are:

174-1593 Volumes 1-10
105-42122 Volumes 1-9
176-100 Volumes 1-6
176-97 Volumes 1-5
174-1340 Volumes 1-19

1 - Package Copy

1 - Assistant Director, Records Management Division
1 - Mr. Dean

1 -

b6
b7C

PEM/GSL:vae *uae*
(12)

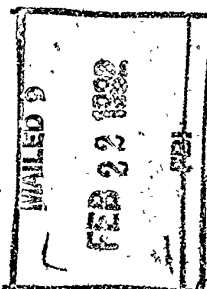
62-118045-331

FEB 23 1982

NOTE: FBIHQ requested original New York Field Office files for utilization in connection with captioned matter. Inasmuch as these files are no longer needed by FBIHQ, they are being returned to New York.

Exec AD Inv. _____
Exec AD Adm. _____
Exec AD LES _____
Asst. Dir.:
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

MAIL ROOM ☐



716594

716597

716595

716596

716598

Greenberg/Gray-7488

Airtel

3/2/82

Director, FBI

ADIC, New York

U. S. vs. FELT, et al.

Mark

Forwarded under separate cover are four boxes containing original New York Field Office files previously submitted to FBIHQ for use in captioned matter. Review of these materials has been completed, and they are no longer needed by FBIHQ.

The field office files being returned are:

176-403A-1B14(1)
176-403A-1B11(1)-1B11(12)
176-403A-1B1(1)-1B3
176-403A-1B3(1)
100-170212-1B1
176-403A-1B1(1)-1B10(10)
176-403A-1B12(1)-1B12(4)
176-24-1B1

100-171181
176-403-1B6(1)
176-403A-1B9(1)
176-403A-1B(4)
176-27-1B1
176-26-1B1(1)
176-403A-1B13(1)

71 Miscellaneous Enclosure Envelopes

718500

718501

718502

718503

Package Copy

Assistant Director, Records Management Division

Mr. Dean

PEM/GSL:vae
(11)

62-118045-332

MAR 9 1982

b6
b7c

Exec AD Inv. _____
Exec AD Adm. _____
Exec AD LES _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

NOTE: FBIHQ requested original New York Field Office files for utilization in connection with captioned matter. Inasmuch as these files are no longer needed by FBIHQ, they are being returned to New York.

Greenberg/Gray-7489

MAIL ROOM ☒

Memorandum



Exec AD Adm. _____
Exec AD Inv. _____
Exec AD LES _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Off. of Cong. & Public Affs. _____
Telephone Rm. _____
Director's Sec'y _____

To : Mr. Monroe *CM/TH*

Date 6/2/82

From : L. E. Dean *LED/TH*

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs

Subject : U. S. v. *0 MARK* *FELT* et al.
PROTECTION OF NATIONAL SECURITY INFORMATION

PURPOSE: To record status of certain FBI documents.

RECOMMENDATION: That Records Management Division personnel recontact U. S. Army Major Ronald George Jones, 695-2785, on 12/2/82 regarding the status of FBI documents concerned with captioned matter.

APPROVED: _____
Director _____
Exec. AD-Adm. _____
Exec. AD-Inv. _____
Exec. AD-LES _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Inspection _____
Intell. _____
Laboratory _____
Legal Coun. _____
Off. of Cong. & Public Affs. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____

DETAILS: On 6/2/82, [redacted] 633-2605, was contacted at the DOJ, Special Security Center. He advised that the documents from captioned case, which include classified materials, are still being maintained in the vault at the DOJ's Special Security Center and will be so held until the disposition of the appeal in this case. U. S. Army Major Ronald George Jones has been specifically assigned to maintain the security of these documents. He can be contacted at 695-2785.

- 1 - Mr. O'Malley
(Attn: Joseph L. Tierney)
- 1 - Mr. Monroe
- 1 - Mr. Dean
- 1 - [redacted]
- 1 - Mr. Barham

DRB:vae vae
(6)

62-118045-333

16 JUN 8 1982

FOUR-B [signature]

57 JUN 29 1982

Greenberg/Gray-7490

OK

Airtel

3/9/83

Director, FBI

SAC, Chicago

(Attn: SA [redacted])

b6
b7C

UNITED STATES v.

FELT, et al.

(U.S.D.C., D.D.C.)

CRIMINAL NO. 78-00-179

ReBucal to Chicago on 3/8/83.

Enclosed herewith for Chicago are Chicago files [redacted] and 62-7608, together with copies of two memoranda each dated 7/7/77 and captioned "Surreptitious Entries" and "Surreptitious Entry Investigation," respectively.

b2
b7D

For the information of Chicago, your file 62-7608 was forwarded to FBIHQ on 4/8/80 in connection with the civil matter captioned American Civil Liberties Union, et al., v. City of Chicago, et al., (U.S.D.C., N.D. ILL.). The other items were hand-carried to FBIHQ in connection with captioned litigation.

In the event Chicago is unable to locate the originals of the two memoranda enclosed herewith, these items should be appropriately block stamped, serialized, and indexed into your file 62-7608. Chicago should also ensure that a copy of the memorandum from [redacted] is placed as last serial in Chicago file 65-5435. Copies of the other memorandum from SA [redacted] should be placed as last serial in the indicated Chicago files: 65-5435, 105-3188, 105-17130-Sub 1, 105-18019-Sub 1, 100-37762, and [redacted].

b2
b6
b7C
b7D

Chicago is also requested to properly serialize and index the one serial presently comprising your file [redacted].

Enclosures (4)

62-118645-334
~~SECRET MATERIAL ATTACHED~~

b2
b7D

Exec AD Inv. _____
Exec AD Adm. _____
Exec AD LES _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

MAIL ROOM ☒

Greenberg/Gray-7491

MAR 10 1983


PERS. REC. UNIT

b6
b7C

Memorandum



ALL FBI INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs

FEDERAL GOVERNMENT	
Subject	Date
Disposition of Files in United States v. Felt, Crim. No. 78-179 (D.D.C.), D.J. File 177-16-33	December 30, 1985 MMM:LHR:rno
To	From
 Chief, Records Unit Federal Bureau of Investigation	M. Miles Matthews, Director Office of Administration Criminal Division

b6
b7C

Some months ago this Division undertook the processing of the files from the case of United States v. Felt so that they might, to the largest extent possible, be transferred to the National Archives. The files involved in this undertaking were contained in two vaults and some 30 safes or locked cabinets located throughout the Main Justice Building.

In large part, the impetus to transfer these files to the Archives came from the practical need to recover the safes for use in the Division. There was also a strong sense that the case has historical importance as an outgrowth of the workings of the Watergate Special Prosecution Force.

The material consists of files from the initial inquiry by the Civil Rights Division (begun in August 1975) into the FBI's use of "surreptitious entry" as an investigative technique; and the files of the Civil Rights Division (April 1976 - December 1977) and the Criminal Division (December 1977 - April 1978) task forces which investigated, using three grand juries, the use of so-called "black bag jobs" in the Weatherman investigation in the early 1970s. Also included are the files employed in our obtaining an indictment of Messrs. Gray, Felt and Miller; the files of the trial team (April 1978 - November 1980), which prosecuted the case against Felt and Miller; and, the files relating to the dismissal of the charges against Gray.

Some of the material is classified and relates to such subjects as the historical use of surreptitious entry (for microphone surveillance) and "black bag jobs," both in policy terms and in particular cases; the extent to which government officials were aware of use of those techniques; the proposed revival of such techniques in investigations other than the Weatherman investigation; and, the whole question of the extent to which foreign powers or groups controlled or aided the Weatherman group.

ENCLOSURE

Almost without exception, the classified information is contained in FBI documents or in legal pleadings, memoranda, or working papers of Department attorneys or defense attorneys, prepared from FBI documents. Some of the classified information comes from the CIA and the NSA although only a few documents are from those agencies. The reason is that the inquiry and investigation were limited to the FBI and, later, the discovery phase of the prosecution was limited to what was contained in FBI files.

JUL 30 1986

b6
b7C

Greenberg/Gray-7492

50 AUG 12 1986
64 OCT 28 1987

With the concurrence of Deputy Assistant Attorneys General Knapp and Toensing, a Paralegal Specialist from the Office of Enforcement Operations [redacted] was detailed to work on processing the files. Rule 6(e) notices were filed in the Southern District of New York and the District of Columbia to allow her access to the grand jury material in the files. She performed three tasks:

b6
b7C

- (i) Inventory. Inventories had previously been prepared for most of the safes. She verified their accuracy and, when necessary, created new inventories.
- (ii) Double check for code word material. In principle, all code word material in the possession of government counsel should have been removed from the ordinary safes, and placed in the safe in the Assistant Attorney General's vault, and all code word material to which defense counsel had access should always have been in the safe in the security center. She double checked this and moved any item containing code word material to the Assistant Attorney General or security center safes.
- (iii) Removal of grand jury material. All grand jury material was removed from the files, in accordance with our understanding that Rule 6(e), Fed. R. Crim. P., would preclude access to anyone not authorized by the court.

[redacted] removed all the grand jury material. When she removed an item or portion of an item, she placed a notice in the file stating that material had been removed and where it could be found. The removed materials have been boxed and sent to the Department's classified files, or security center as appropriate.

b6
b7C

Now that [redacted] tasks are complete, I am writing to advise you of the completed process and to invite your comments concerning further disposition of the records, in particular, the extent to which the records may be transferred to the National Archives.

b6
b7C

The records in question consist of three types:

(1) Grand Jury records: As noted above, all those records have been boxed (approximately 115 boxes) and sent to the Department's classified files with access precluded to anyone not authorized by the court. In that regard, note that in the case of American Friends Service Committee v. Webster, 720 F2d 29 (CA DC 1983), the Civil Division argued vigorously, and the D.C. Circuit agreed, that the Archivist cannot be given even temporary inspection-type access (much less permanent possession) of grand jury material, nor would there be any basis for a court order allowing such access. Accordingly, we will not seek to transfer these records to the National Archives and consider their current status their final disposition.

(2) Code word material: Approximately 16 boxes of code word material have been boxed and placed in the Department's security center.

In our view the National Archives is fully competent and fully equipped to house and care for code word material. We have learned, from Edwin A. Thompson, Director of the Records Declassification Division at the Archives, that the Archives has various storage areas which have been approved for, and which contain, code word material, including areas at some of the Presidential Libraries around the country, as well as two areas at the Archives building in Washington.

One of the areas in Washington contains materials from diverse sources such as former National Security Advisor files, the files of the Rockefeller Commission, and the files of the Watergate Special Prosecution Force. Indeed, the Watergate files at the Archives contain some of the very same documents as are in our code word files.

The other code word storage area at Archives headquarters contains the complete files of the Senate Select Committee on Intelligence (the Church Committee). Those files probably include the substance of all of the code word material we have, and much more.

Nonetheless, strong arguments have been put forward that this material be kept in the Department's security center. To the extent that records or information that originated with your agency is contained in these boxes, we would appreciate your views and any explanation as to why the records should not go the National Archives. ←

(3) The remaining litigative file: Approximately 164 boxes of other litigative material remains. There can be no doubt that the records are of historical significance. This is not just the judgment of the participants in the case but also that of Mr. Henry Wolfinger who makes such judgments for the Archives with respect to judicial records. The Archives has expressed a strong interest in acquiring all the records. There are sound administrative and historical reasons for keeping the file intact. Accordingly, subject to consideration of your views and comments, we anticipate transferring all of the remaining litigative files to the National Archives. ←

With regard to the transfer, safeguards can and should be established to insure appropriate consultation by the Archives with the Department, and/or the agency whose information is involved, before any declassification and release of information to the public. Edwin Thompson emphasizes that consultation is a standard practice for the Archives, and he cites the existence of a working relationship, for consultation, between his office and NSA with respect to various old files. A draft letter of agreement with the National Archives (and draft response from them) are attached. Your views on the form and content of each are sought as well. ? ←

If you wish to review any of the records concerning your agency, please call Leslie H. Rowe, Associate Director of this office, on 633-2641. Mr. Rowe will make arrangements for you to review the indexes and/or the actual ←

records. If, after the review you wish to make comments or recommendations concerning the proper disposition of the records we would be pleased to receive them. They will be given every consideration.

Thank you for your assistance in this matter. We look forward to the early disposition of these records.

Attachments



U.S. Department of Justice

Washington, D.C. 20530

ALL FBI INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs

Archivist of the United States
National Archives and Records Service
Washington, D.C. 20408

Dear :

Because the case of United States v. Felt, Crim. No. 78-179 (D.D.C.), D.J. File 177-16-33, is closed and, in our judgment, is of historical significance, I offer you our records (minus the grand jury records) in this case for permanent preservation in the National Archives.

The records being offered, were compiled for law enforcement purposes, are of a generally sensitive nature (in many instances classified) or are otherwise subject to legal restraints which require that a significant portion of the records be closed to public access. Accordingly, I request that the following specific restrictions on access to and use of the records be imposed:

1. Prior to making a decision on opening to public access any documents, or information provided to the Criminal Division by other Department of Justice components, such as the Federal Bureau of Investigation, or other Federal agencies, such as the Central Intelligence Agency or the National Security Agency, the Archivist of the United States or his designee will consult with the Criminal Division as well as the agency of origin and/or the agency with primary subject matter interest.

2. Access to all other records under this agreement will be governed by the General Restrictions of the National Archives, consistent with the Freedom of Information Act, 5 U.S.C. 552.

The Assistant Attorney General, Criminal Division, and other Department of Justice personnel specifically designated in writing by him, may have access without regard to any or all restrictions. In recognition of the need of the Department of Justice for possible access to and the use of certain records, it is agreed that copies of any records designated by the Assistant Attorney General, Criminal Division, that may be necessary for use in

Greenberg/Gray-7496

ENCLOSURE

62-118045-335

litigation involving the United States as a party or in which the interests of the United States are being represented, shall be provided to the Department of Justice without resort to a subpoena duces tecum. Routinely, copies of documents, rather than originals, shall be provided. Certified copies shall be provided upon request.

I appreciate your assistance and cooperation in this matter, and that of your staff in developing this accession procedure.

Sincerely,

STEPHEN S. TROTT
Assistant Attorney General
Criminal Division

Greenberg/Gray-7497

ALL FBI INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs

Department of Justice
Washington, D.C. 20530

Dear :

On behalf of the United States of America and in accord with the provisions of 44 U.S.C. 2103-4, I accept for deposit with the National Archives of the United States the permanently valuable records of United States v. Felt, Crim. No. 78-179 (D.D.C.), D.J. File 177-16-33. I further accept the specific restrictions and other conditions placed upon these records pursuant to your letter of _____.

The acceptance of that portion of the records that consists of materials provided to the Criminal Division by other Department of Justice components and other Federal agencies will be fully subject to the restrictions of the Freedom of Information Act, 5 U.S.C. 552 and prior to any decision on opening such records to public access, we will consult with your Division or the agency which originated or has primary subject matter interest in the records.

Sincerely,

Archivist of the United States

Greenberg/Gray-7498

62-118045-335
ENCLOSURE

242

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORM

PAGE 1 OF 2

DATE

12/7/83

CLASSIFICATION

UNCLAS

PRECEDENCE

ROUTINE

#F242RR AFOMDE HQ H0242 #H04UTR 072348Z DEC 83

START HERE

FM DIRECTOR FBI

TO ALL FBI FIELD OFFICES (ROUTINE)

ALL LEGAL ATTACHES (ROUTINE)

BT

UNCLAS

BUREAU WIDE INFORMATION PROGRAM (83-23)

INFORMATION CONCERNING FORMER FBI OFFICIALS W. MARK FELT AND

EDWARD S. MILLER

ON NOVEMBER 15, 1983, THE COURT OF APPEALS FOR THE DISTRICT
OF COLUMBIA VACATED THE JUDGMENTS OF CONVICTION AGAINST FORMER
FBI OFFICIALS W. MARK FELT AND EDWARD S. MILLER AND REMANDED
THE CASE TO THE DISTRICT COURT WITH INSTRUCTIONS TO DISMISS THE
INDICTMENTS. ON NOVEMBER 28, 1983, DISTRICT JUDGE WILLIAM B.
BRYANT COMPLIED WITH THE ORDER AND DISMISSED THE INDICTMENTS.
THE APPELLATE COURT ORDER STATED IN PART THE FOLLOWING:

"ON CONSIDERATION OF APPELLANTS' MOTION TO VACATE THE
JUDGMENTS OF CONVICTION ON THE GROUND THAT THE PRESIDENTIAL

DO NOT TYPE MESSAGE BELOW THIS LINE

APPROVED BY

DRAFTED BY

RSY:NLS

DATE

12/7/83

ROC

7116

TELE EXT

5552

- 1 - EACH EXECUTIVE ASSISTANT DIRECTOR
- 1 - EACH ASSISTANT DIRECTOR
- 1 - MR. BLUM
- 1 - MR. J. MURRAY
- 1 - MR. HOTIS
- 1 - [REDACTED]

b6
b7CFEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS CENTER

DEC 09 1983

DO NOT FILE WITHOUT COMMUNICATIONS CENTER

Greenberg/Gray-7499

DO NOT TYPE PAST THIS LINE

546

62-115462

ORIGINAL FILED IN

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORM

PAGE 2

CONTINUATION SHEET

PAGE TWO DE HQ 0242 UNCLAS

20 PARDON GRANTED TO THE APPELLANTS HAS RENDERED THESE CASES MOOT
18 AND THAT REPRESENTATIONS HAVE BEEN MADE THAT COLLATERAL
16 CONSEQUENCES ARE UNLIKELY TO FLOW FROM THE FACT OF APPELLANTS'
14 CONVICTIONS, AND THE RESPONSE OF THE APPELLEE UNITED STATES
12 WHICH AGREES WITH THE APPELLANTS THAT AS A MATTER OF LAW THESE
CASES ARE MOOT, IT IS ... FURTHER ORDERED BY THE COURT THAT
THE JUDGMENTS BELOW ARE VACATED AND THE CASES REMANDED TO THE
DISTRICT COURT WITH DIRECTIONS TO DISMISS THE INDICTMENTS ON
THE GROUNDS OF MOOTNESS."

10 THIS ACTION IS RECEIVED THROUGHOUT THE FBI WITH A GREAT
SENSE OF SATISFACTION AND APPRECIATION. WE ARE ESPECIALLY
HAPPY FOR THE FELT AND MILLER FAMILIES.

8 PLEASE BRING THESE DEVELOPMENTS TO THE ATTENTION OF ALL
PERSONNEL.

6 BT
1

DO NOT TYPE MESSAGE BELOW THIS LINE

DO NOT TYPE PAST THIS LINE

Greenberg/Gray-7500

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

NOV 23 1983

JAMES F. DAVEY, Clerk

UNITED STATES OF AMERICA

v.

W. MARK FELT and
EDWARD S. MILLER

CR. No. 78-00179

ORDER

On November 15, 1983 the United States Court of Appeals for
the District of Columbia Circuit issued the following order:

On consideration of appellants' motion to
vacate the judgments of conviction on the ground
that the Presidential pardon granted to the
appellants has rendered these cases moot and that
representations have been made that collateral
consequences are unlikely to flow from the fact of
appellants' convictions, and the response of the
appellee United States which agrees with the
appellants that as a matter of law these cases are
moot, it is

ORDERED by the Court that said motion is
granted. It is

FURTHER ORDERED by the Court that the
judgments below are vacated and the cases remanded
to the district court with directions to dismiss
the indictments on the grounds of mootness. It is

FURTHER ORDERED by the Court that the Clerk
shall transmit forthwith to the District Court, in
lieu of the mandate, a certified copy of this
Order.

Upon consideration thereof, it is hereby

Greenberg/Gray-7501

NOT RECORDED
7 DEC 19 1983

Teletype to All SACs + Legats 12/6/83
JAM: baw

ORDERED that the indictment is hereby dismissed on the grounds of mootness.


UNITED STATES DISTRICT JUDGE

Date: *November 28, 1983*

Greenberg/Gray-7502

Date 11/17/83

Classification of Mail:

- ☐ Unclassified
☐ Confidential
☒ Secret
☐ Top Secret*
☐ SCI*

Mail Category:

Letter	_____	Airtel	_____
LHM	_____	Memo	<u>XX</u>
Report	_____	Other	_____
Teletype	_____		

FD-501 Number _____ FD-502 Number _____

Subject Gray, L. Patrick IIIDate of Mail 11/17/83Description of Material Memo
(include identity of originating office or agency)

This serial has been removed and placed in:

☒ Special File Room, Room 5991, FBIHQ

☐ _____
 (Field Office - Room, Cabinet, or other
 location where material is stored)

ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED
 DATE 05-12-2009 BY 65179 dmh/baw/sbs

This action taken based upon authority of:

☐ TS/SCICO, FBIHQ, 62-116065

☐ Field Office Manager — 62-118045-V
 File and Serial number

(Signature and Title of Approving Official)_____
Date

Greenberg/Gray-7503

*requires special handling

PERMANENT SERIAL CHARGE-OUT

Memorandum



Exec AD-Adm. ☒
 Exec AD-LES ☒
 Asst. Dir.:
 Adm. Servs. ☒
 Crim. Inv. ☒
 Ident. ☒
 Intell. ☒
 Laboratory ☒
 Legal Coun. ☒
 Plan. & Insp. ☒
 Rec. Mgnt. ☒
 Tech. Servs. ☒
 Training ☒
 Public Affs. Off. ☒
 Telephone Rm. ☒
 Director's Sec'y ☒

To : Mr. Mintz *jm*

Date 2/12/86

From : C. P. Monroe *CM*

Subject : DISPOSITION OF FILES IN UNITED STATES
 v. FELT, CRIM. NO 78-179 (D.D.C.),
 D. J. FILE 177-16-33
MARK

ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED
 DATE 05-12-2009 BY 65179 dmh/baw/sbs

PURPOSE: The purpose of this memorandum is to apprise the Criminal Investigative Division (CID), the Intelligence Division (INTD), and the Legal Counsel Division (LCD) of the disposition proposed by the Criminal Division of the Department of the records processed for and resulting from captioned action.

RECOMMENDATIONS:

1. That attached proposal by the Criminal Division of the Department be reviewed by CID, INTD, and LCD for comments/concurrence.

APPROVED:	Adm. Servs. <input checked="" type="checkbox"/>	Laboratory <input checked="" type="checkbox"/>
	Crim. Inv. <input checked="" type="checkbox"/>	Legal Coun. <input checked="" type="checkbox"/>
Director	Ident. <input checked="" type="checkbox"/>	Off. of Cong. & Public Affs. <input checked="" type="checkbox"/>
Exec. AD-Adm. <input checked="" type="checkbox"/>	Inspection <input checked="" type="checkbox"/>	Rec. Mgnt. <input checked="" type="checkbox"/>
Exec. AD-Inv. <input checked="" type="checkbox"/>	Intell. <input checked="" type="checkbox"/>	Tech. Servs. <input checked="" type="checkbox"/>
Exec. AD-LES <input checked="" type="checkbox"/>		Training <input checked="" type="checkbox"/>

**LCD=provide an opinion as to legal constraints on each alternative considered*
2/18/86

2. That document classification review be conducted prior to transfer to the National Archives.

Box 174
62-118045-336
CM
62-118045-336

Dove LCD see LCC addendum JHD

DETAILS: By letter dated 12/30/85 (copy attached), M. Miles Matthews, Director, Office of Administration, Criminal Division, proposed the transfer of documents related to captioned matter to the National Archives, with the exception of Grand Jury materials. The records were stored in two vaults and some 30 safes or locked cabinets, which indicates a substantial volume of records.

7 JUL 30 1986

62-118045

Enclosures *handled separately*

1 - Mr. Mintz
 1 - Mr. Clarke
 2 - Mr. Davis (Attn: Mr. Blake)
 (Attn: Mr. Collingwood)

1 - Mr. Geer
 CM: ogz (11)

64 NOV 2 1985
 64 NOV 12 1985

Greenberg/Gray-7504

1 - Mr. Monroe
 1 - Mr. Scherrer
 1 - Mr. Stoops
 1 - Mr. Dudley
 1 - ☐

See CID Addendum
 page (s) 6

SEE INTD ADDENDUM PAGE 7.

b6
 b7C

FBI/DOJ

Memorandum from C. P. Monroe to Mr. Mintz
Re: Disposition of Files in United States
v. Felt, Crim. No 78-179 (D.D.C.),
D. J. File 177-16-33

Mr. Matthews has provided a detailed description of the processing of these records and has also drafted a letter (and response) to the Archivist to offer the collection to the National Archives.

Due to the sensitive nature of the records involved, the Records Management Division is seeking the comments of CID, INTD, and LCD concerning the proposed transfer. As an alternative to direct transfer to the National Archives, we might propose storage of the records in the Washington National Records Center in Suitland, MD, for a period of 50 years, rather than making the records immediately available to the National Archives.

In the event that full concurrence is granted to transfer the records to the National Archives, a classification review should be conducted for material relating to national security.

Greenberg/Gray-7505

Memorandum from C. P. Monroe, to Mr. Mintz, dated 2/12/86
Re: DISPOSITION OF FILES IN UNITED STATES v. FELT

ADDENDUM: LEGAL COUNSEL DIVISION (LCD), 3/25/86, LWM: [signature]

In the attached memorandum, we are advised that the Criminal Division of the Department of Justice (DOJ) is proposing the transfer to the National Archives of the Criminal Division's files related to its indictment of Messrs. GRAY, FELT and MILLER, the trial of Messrs. FELT and MILLER, and the dismissal of charges against Mr. GRAY. The only stated bases for such a transfer of admittedly classified and sensitive information is the need to recover storage space and the historical importance of the case.

There are four courses of action possible here.

1. Present Transfer to Archives

Once classified material is transferred to Archives, the Federal Bureau of Investigation (FBI) will have lost control over declassification of FBI material. Once classified material is transferred from the classifying agency to Archives, Archives may declassify the information without the permission of the classifier. Executive Order (EO) 12356, Section 3.2(c); 28 Code of Federal Regulations (C.F.R.), Section 17.47. The classifying agency is to review such material prior to transfer, 28 C.F.R., Section 17.47(a), but once the material is transferred it may be downgraded or declassified by Archives. 28 C.F.R., Section 17.47(b). The DOJ agreement with Archives requires only that Archives "consult" with the Criminal Division prior to release. There is no agreement to consult with other DOJ components such as the FBI. Presumably this requirement, which gives the FBI no voice in the decision, also applies to information which may fall under other recognized types of privilege, such as the informant and deliberative process privileges.

2. Present Transfer to Archives after
FBI Classification Review

This alternative has been proposed by Records Management Division (RMD), and would afford some measure of increased security over the documents. However, as we noted above, once the material is transferred to Archives, Archives may downgrade and declassify as it sees fit. EO 12356, Section 3.2(c); 28 C.F.R., Section 17.47. Classification review by the FBI would, however, afford us an opportunity to determine what is included in these documents. Without such a review by us,

Memorandum from C. P. Monroe to Mr. Mintz, 2/12/86
Re: DISPOSITION FILES IN UNITED STATES v. FELT

LCD Addendum Con't:

the Department as contributor might conduct its own classification review using persons less experienced in the significance of seemingly innocuous or confusing types of information.

3. Interim Storage by Washington
National Records Center

RMD has also proposed as an alternative that the records be sent to the Records Center for 50 years before being transferred to the National Archives. This alternative has several advantages.

A. Such storage, authorized by 44 United States Code (U.S.C.), Section 2907, would not give Archives declassification authority until Archives acquired the material from storage. EO 12356, Sections 3.2(a) and (c); 28 C.F.R., Section 17.45. Archives cannot order material transferred to it until the material is 30 years old. 44 U.S.C., Section 2103(2) (the time period was 50 years until changed to 30 by a 1978 amendment). Since the first concern of the Department in considering transfer to Archives is recovery of storage space, the first Departmental objective can be met without a present "release" to Archives. The Department's second concern--turning over documents of historical significance--may also be realized in accordance with the statute, although on a delayed basis.

B. Deferred transfer will also serve the FBI's interests in stemming the release of information used only for purposes of generating civil litigation against the FBI, not so much for purposes of redressing wrongs done to individuals, but more for purposes of prying information out of the FBI for the use of hostile foreign powers and the harassment of former Bureau officials through the civil discovery process. Since we have not seen the information, it is difficult to assess the specific impact that release of this information would have on future and pending litigation against the FBI and its employees, but we have no doubt that the general impact cannot possibly be positive. We have a number of suits pending in which FBI practice and policy on surreptitious entry and electronic surveillance would be of assistance to the plaintiffs. Thirty years would significantly lessen the impact of release of such information upon the lives of our former employees, yet at the same time preserve the public's right to know.

Memorandum from C. P. Monroe to Mr. Mintz, 2/12/86
Re: DISPOSITION FILES IN UNITED STATES v. FELT

LCD Addendum Con't:

4. No Transfer

Although no one has recommended that the FBI oppose all transfer of documents to Archives, it is an option to be considered. We point out, however, that Archives does have the power to take the documents after 30 years unless the agency head certifies they are currently needed. 44 U.S.C, Section 2103(2). Since the Department is now, in effect, saying it has no use for the documents, it seems likely that the Archives would be successful in obtaining possession. Such a position by the FBI might risk the present transfer of documents to Archives, thereby exposing the material to declassification, our former employees to harassing litigation, and our present civil suits to the impact of additional disclosure of sensitive investigative techniques.

For the reasons discussed above, LCD recommends that the FBI request that the Department transfer the records to Washington National Records Center for storage and that the records not be turned over to the National Archives until at least 30 years have passed from the date the files were generated.

APPROVED:	Adm. Servs. _____	Laboratory _____
	Crim. Inv. _____	Legal Coun. _____
Director _____		Off. of Cong. & Public Affs. _____
Exec AD-Adm. _____	Ident. _____	Rec. Mgnt. _____
Exec AD-Inv. _____	Inspection _____	Tech. Servs. _____
Exec AD-LES _____	Intell. _____	Training _____

X as indicated above, each of three alternatives is legally permissible.

Greenberg/Gray-7508

Memorandum from C. P. Monroe to Mr. Mintz, dated 2/12/86
RE: DISPOSITION OF FILES IN UNITED STATES
V. FELT, CRIM. NO. 78-179 (D.D.C.),
D.J. FILE 177-16-33

ADDENDUM: CRIMINAL INVESTIGATIVE DIVISION; 5/21/86; JDM:bam

The Criminal Investigative Division supports the recommendation of the Legal Counsel Division. The FBI should request the Department transfer the records to the Washington National Records Center for storage, and that the records not be turned over to the National Archives until at least 30 years have passed from the date the files were generated.

APPROVED: _____ Adm. Servs. _____ Laboratory _____
Crim. Inv. _____ Legal Coun. _____
Director _____ Off. of Cong
& Public Affs. _____
Exec. AD-Adm. _____ Ident. _____ Rec. Mgnt. _____
Exec. AD-Inv. _____ Inspection _____ Tech. Servs. _____
Exec. AD-LES _____ Intell. _____ Training _____

1 - Mr. Mintz
1 - Mr. Clarke
2 - Mr. Davis
 (Attn: Mr. Blake)
 (Attn: Mr. Collingwood)
1 - Mr. Geer
1 - Mr. Monroe
1 - Mr. Scherrer
1 - Mr. Stoops
1 - Mr. Dudney
1 -

b6
b7C

Memorandum from C. P. Monroe to Mr. Mintz, dated 2/12/86
Re: Disposition of Files in United States
v. Felt, Crim. No 78-179 (D.D.C.),
D. J. File 177-16-33

ADDENDUM: INTELLIGENCE DIVISION (INID), 6/5/86, JLT:ifc *[Signature]*

INID agrees with LCD and CID that transfer of these records to the Washington National Records Center for storage, rather than to the Archives (with or without classification review) for permanent retention, offers the best prospect of protecting FBI interests. As noted by RMD, portions of the records are indeed sensitive. They will remain so indefinitely, and may be difficult to recognize as such. INID would be particularly concerned with historians' or archivists' potential lack of perception or sensitivity to two areas in particular. They are: information originating with friendly foreign intelligence services, and information relating to a now discontinued program comparable in many respects to today's 212 program. The FBI cannot afford to lose control over the declassification or disclosure of its records of either type.

The lapse of time has made and will continue to make these records more and more difficult to process responsibly and efficiently. Although unstated as a concern, this aspect is undoubtedly a factor in the DOJ proposal. Storage space is a valid concern, as stated, but the resource demands which a disclosure request would generate are very likely the impetus behind the proposal and the solution selected.

INID would also support revision of the relevant portions of E.O. 12356 which create this trap.

APPROVED:	Adm. Servs. _____	Laboratory _____
	Crim. Inv. _____	Legal Coun. _____
		Off. of Cong. _____
Director _____		Public Affs. _____
Exec. AD-Adm. _____	Ident. _____	Rec. Mgnt. _____
Exec. AD-Inv. _____	Inspector _____	Tech. Servs. _____
Exec. AD-LES _____	Intell. _____	Training _____

[Signature]

INTD ADDENDUM

Memorandum



To : Assistant Attorney General
Criminal Division
Attn: M. Miles Matthews, Director
Office of Administration

Date June 30, 1986

From : Robert W. Scherrer
Section Chief, Records Section
Records Management Division

Subject : DISPOSITION OF FILES IN UNITED STATES
v. FELT, CRIM. NO. 78-179 (D.D.C.)
D. J. FILE 177-16-33
MARK

~~FEDERAL GOVERNMENT~~
~~FEDERAL GOVERNMENT~~

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs

This is in response to your letter, dated December 30, 1985, which pertained to the disposition of a substantial volume of record material originating from files of the Federal Bureau of Investigation (FBI). The material was accumulated over a period of five years from a series of intensive inquiries and investigations conducted by the Civil Rights Division and the Criminal Division and relate primarily to investigative techniques employed during the early 1970s and former FBI officials. I share your opinion of the historical value of the material, having served in an official capacity during the appraisal of FBI records by the National Archives and Records Administration (NARA) in response to orders issued in the action American Friends Service Committee, et al. v. William H. Webster, et al., and having had the opportunity to observe NARA's keen interest in the investigative techniques you mention. I also have an appreciation for your regard for restraints.

As the result of the aforementioned NARA appraisal of records, criteria to identify permanent historical records were established, as well as retention periods to be observed prior to destruction or transfer of records to the National Archives. A category of inactive criminal-related records will be transferred to the National Archives after 30 years; however, the transfer of an active and more sensitive category of criminal records and security-related records will be delayed until the records are 50

Enclosures (3)

Exec. AD-Adm.	62-118045
Exec. AD-Inv.	1 Mr. Glover
Exec. AD-LES	1 Mr. Clarke
Asst. Dir.:	2 Mr. Davis (Attn: Mr. Blake)
Adm. Servs.	(Attn: Mr. McFarland)
Crim. Inv.	1 Mr. Geer
Ident.	1 Mr. McCreight
Inspection	1 Mr. Scherrer
Intell.	1 Mr. Stoops
Laboratory	1 Mr. Dudney
Legal Coun.	1 [Redacted]
Off. of Cong. & Public Affs.	CMG:gm (12)
Rec. Mgnt.	
Tech. Servs.	
Training	
Telephone Rm.	
Director's Sec'y	

ENCLOSURE

62-118045-337

JUL 30 1986

Greenberg/Gray-7511

SEE NOTE ON PAGE 4



b6
b7C

MAIL ROOM ☒ *Rux*

MAILED 18
JUN 30 1986

AUG 12 1986
OCT 28 1987

Memorandum from Robert W. Scherrer to Assistant Attorney General,
Criminal Division

Re: Disposition of files in United States
v. Felt, Crim. No. 78-179 (D.D.C.)
D. J. File 177-16-33

years old. Therefore, the transfer of the records or information originating with the FBI in any of the three categories which you have so articulately addressed, would be premature at the present time and would exceed by many years, the transfer dates for the corresponding information currently maintained in FBI files. The disposition schedule authorizing these retention periods was approved by the Archivist of the United States, but remains bound by the American Friends litigation.

As an alternative to a direct transfer, I would suggest storage of the records in the Washington National Records Center for a period equivalent to the retention periods of the original records. The material would remain within your control, would be retrievable, and would not be available for public scrutiny until a time designated by you. The records would be sealed for storage and placed in restricted areas in the record center to further enhance their security. You noted that the National Archives has expressed a strong interest in acquiring all the records. Receipt and maintenance of this material in the records center will ensure its ultimate (and direct) transfer to the National Archives in the future.

For your information, I have attached a copy of an internal memorandum, dated March 24, 1986, from Raphael O. Gomez, Trial Attorney, to David Anderson, Branch Director, Federal Programs Branch, Civil Division (Your file 145-12-4141), which provides a legal analysis on the disposition of tax and tax return information and Grand Jury and Title III materials, due to the legal restrictions imposed on their disclosure. The results of the analysis concluded that the statutory restrictions for the three categories did not preclude the National Archives from storing these materials.

I have taken the liberty to enclose a draft of a letter to [redacted] Assistant Archivist for Presidential Libraries and Project Director of the aforementioned appraisal of FBI records, to request security storage for the 295 containers you have described (removal to authorized records center containers could alter this figure), along with a draft of Standard Form 115 to offer the records to the National Archives. In the event that you choose to adopt this concept and [redacted] provides a positive

b6
b7c

Memorandum from Robert W. Scherrer to Assistant Attorney General,
Criminal Division

Re: Disposition of files in United States
v. Felt, Crim. No. 78-179 (D.D.C.)
D. J. File 177-16-33

response, future correspondence would include preparation of Standard Form 135 to describe the collection and its volume to obtain the necessary storage space in the records center and to cite the necessary restrictions on access. The FBI would conduct an appropriate classification review to enable the direct transfer of the material from the records center to the National Archives at the time designated by you. Regardless of your final decision on disposition, we would ask to be consulted in order to conduct the classification review prior to your releasing the records and to segregate any tax and Title III materials.

I am most appreciative of the opportunity to provide my views on the disposition of this sensitive record collection and also to comment on the obvious painstaking review and consideration you have afforded this matter. Please do not hesitate to contact me at telephone [redacted] the event I can assist you further.

b6
irb7C


Greenberg/Gray-7513

Memorandum from Robert W. Scherrer to Assistant Attorney General,
Criminal Division

Re: Disposition of files in United States
v. Felt, Crim. No. 78-179 (D.D.C.)
D. J. File 177-16-33

NOTE: Based on letter, dated 12/30/85, from Mr. Matthews, in which he requested comments and recommendations concerning his proposal to initiate an immediate transfer of record material resulting from the action United States v. Felt, excluding Grand Jury and code word materials. Mr. Matthews included a draft letter to the Archivist (and response) to offer the record collection. Since much of the material is sensitive and classified, C. P. Monroe memorandum to Mr. Mintz, dated 2/12/86, requested the views and comments of the Criminal Investigative, Intelligence, and Legal Counsel Divisions. Without exception, the responsive addenda strongly favored storage in the Washington National Records Center (WNRC) due to the nature of the material involved. Mr. Matthews is being advised that the original FBI documents will not be transferred to the National Archives for 50 years, and storage of the material in a restricted area in WNRC for a period equivalent to the retention of the original records is being suggested. Mr. Matthews is being provided with drafts of a letter to [redacted] and Standard Form 115 to initiate his offer, along with a legal analysis on the disposition of tax and tax return information and Grand Jury and Title III materials, prepared by the Civil Division, Department of Justice. We have requested to be notified, regardless of Mr. Matthews' final decision, in order to conduct the classification review and review the material for tax information and Title III materials.

b6
b7C

 APPROVED: Adm. Servs. _____ Laboratory _____
Crim. Inv. _____ Legal Coun. _____
Director _____
Exec. AD-Adm. _____
Exec. AD-Inv. _____
Exec. AD-LES _____ Intel. _____
Tech. Servs. _____
Training _____
pm/Red

Greenberg/Gray-7514

MAR 24 1986

American Friends Service Committee
v. Webster, USDC D.C., C.A. 79-1655

RCGomez:jc
145-12-4141
Tel: 913-1310

David Anderson
Branch Director
Federal Programs Branch
Civil Division

Raphael O. Gomez
Trial Attorney
Federal Programs Branch
Civil Division

TIME LIMITS

The NARA and FBI are submitting their response to the district court's December 20, 1985 Order concerning approval of the records disposition plan for the FBI on March 31, 1986. They are also notifying the Court that the Plan is being amended as to the disposition of three types of statutorily restricted records: grand jury materials, Title III materials and tax returns and tax return information.

RECOMMENDATIONS

The NARA and FBI recommend that the FBI's Records Retention Plan be amended to provide that documentary material in FBI files which consist of grand jury, Title III and tax returns and return information ¹/ documents be transferred to the Archives under the schedule provided in the current Plan with certain limitations: (1) such materials would be segregated and sealed; (2) neither personnel from Archives or the public at large would have access to such materials, except as provided by the relevant statutes for such documents; and (3) the FBI would retain legal custody.

I recommend that the NARA and FBI's recommendation be approved.

Greenberg/Gray-7515

¹ With respect to tax returns and tax return information, the FBI may defer to the IRS as to whether such documents can be transferred in the manner proposed.

62-118045-337
ENCLOSURE

- 2 -

QUESTION PRESENTED

The Records Retention Plan submitted to the district court for its approval provides that three types of records, i.e. grand jury materials, Title III electronic surveillance materials and tax returns and tax return information, are to be transferred to the Archives or otherwise disposed pursuant to the disposition schedule contained in the Plan for the classification in which they are found. After submitting the Plan to the district court, the FBI determined that these statutorily restricted materials could not be transferred without restriction. Both agencies now agree that such records can be transferred but with the three restrictions outlined above. The question presented is:

Whether three discrete categories of records which are subject to statutory restrictions against disclosure, i.e. grand jury, Title III, tax returns and tax return information materials, can be transferred to the Archives where legal custody remains with the FBI and access by the Archives or the public at large is not permitted, except as provided by the relevant statutes which govern such materials.

STATEMENT

In developing the FBI's Records Retention Plan under this court's January 10, 1980 Order, the issue of whether NARA personnel could inspect statutorily restricted materials first arose. In its June 9, 1981 Order ^{2/} the district court directed the FBI to allow the Archives to inspect three types of records: grand jury materials, Title III electronic surveillance materials, and tax returns and tax return information. The district court based its determination on the records management provision of the records acts, 44 U.S.C. § 2906, which permits archival access to statutorily restricted materials under certain specified circumstances.

On appeal, the United States Court of Appeals for the D.C. Circuit reversed the district court's decision in part. AFSC v. Webster, 720 F.2d 29 (D.C.Cir. 1983). First, the Court of Appeals found that these three types of records have statutory

² After revisiting this question upon the government's motion for reconsideration, the Court reiterated its order on October 20, 1982.

restrictions which limit disclosure. 720 F.2d at 77. Second, the Court of Appeals held that these statutes did not provide an exception for archival inspection. Id. Finally, the Court held that the Archives authority to inspect such materials under the records management provision of the records acts, 44 U.S.C. § 2906(a)(2), permits access to statutorily restricted materials only upon approval by the head of the relevant agency or the President. Id. Neither had authorized such access in the instant case. Id.

The Court of Appeals, however, stated that while the Archives could not inspect such materials:

This is not to say that the District court must refrain from insisting that the FBI and the Archives deal with the FBI's management of [such materials]. These records are indeed appropriately considered in framing a records retention plan for the FBI. We hold only that in developing the plan, means other than inspection of the restricted use records must be employed.

Id.

Accordingly, the Archives did not have to redo the plan. It had made its determination concerning records disposition without actually inspecting such statutorily restricted materials. Under the methodology employed, the FBI had segregated such materials in separate folders and identified the type and number of pages of such segregated materials.

In November 1981, NARA and the FBI submitted the Records Retention Plan to the District court for its approval. The Plan provided for disposition of all FBI records, including those which had statutory restrictions as to disclosure. For instance, where the Plan provided that records in a specified classification would be transferred to the Archives for permanent retention, any statutorily restricted material in that classification would also be transferred. If the Plan provided for destruction of records in a classification after a specified retention period, any statutorily restricted material in the classification would also be destroyed.

After the Court of Appeals' decision which reversed the district court's order permitting inspection, the FBI sought to amend the Plan. The FBI proposed that statutorily restricted records would not be transferred to the Archives. In view of

the Court of Appeals' decision which held that the Archives could not inspect such materials, the FBI responded that it could not lawfully transfer them. The Archives disagreed.

The matter was referred to the Office of Legal Counsel. On February 27, 1986, OLC opined that NARA's archival administration authority under 44 U.S.C. §§ 2107(a) and 2108(a), which empowers the Archivist to open up 30 year old records that are subject to statutory restrictions, did not empower the Archivist to open up tax returns and tax return information, grand jury material and Title II electronic surveillance material. OLC opinion dated February 27, 1986 (attached).

Pursuant to the district court's December 23, 1985 Order, NARA and the FBI are responding to the court's recommendations concerning amendment of five areas in the Plan. Since the Court is now prepared to issue a final ruling on the Plan and in view of OLC's opinion which requires that the Plan be amended, NARA and the FBI both agree that the district court must be informed that the Plan is to be amended as to disposition of these three types of records. While OLC's opinion provides that unrestricted transfer of such statutorily restricted materials cannot be done, restricted transfer is allowable.

Accordingly, NARA and the FBI propose to amend the Plan as to these three statutorily restricted records as follows:

1. The FBI would transfer such materials in segregated and sealed form to the Archives pursuant to the schedule set out currently in the Plan;
2. The FBI would retain legal custody of such materials;
3. The Archives would agree not to access to such materials or to permit the public at large to have access, except as provided by the relevant statutes for such records, i.e. 28 U.S.C. § 6362, Fed. R. Crim. P. 6(e) and 18 U.S.C. § 3510 et seq.

DISTUCTION

The FBI's and NARA's proposal for restricted transfer of grand jury, Title III, tax returns and tax return information records resolves an impasse which has serious potential for an adverse decision from the district court, and potentially the Court of Appeals. The statutory restrictions which pertain to these three types of records involve the issue of disclosure and not transfer. With the restrictions detailed above, namely

legal custody remaining with the FBI and the Archives agreeing not to access such materials, except as provided by statute, the last major hurdle blocking approval of the Plan is removed.

The three kinds of materials at issue are grand jury materials, Title III electronic surveillance materials, and tax returns and tax return information. With regard to each, Congress has established comprehensive restrictions governing disclosure, either to members of the public or within the government itself, and as a general matter no disclosures are permitted.

1. Grand Jury Materials

Federal Rules of Criminal Procedure, 6(e)(2) establishes a general rule of nondisclosure that applies to each person to whom grand jury materials are entrusted. See S. Rep. No. 95-354, supra, at 7; Advisory Committee Notes on Fed. R. Crim. Proc. 6(e) (1966), 13 U.S.C. App. at 1411. The only exceptions to this rule are those found under Rule 6(e)(3). Subparagraph (e)(3)(A)(i) allows disclosure of grand jury materials under four exceptions:

Disclosure . . . may be to-

(i) an attorney for the government for use in the performance of such attorneys's duty; and

(ii) such government personnel as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney's duty to enforce federal criminal law.

Disclosure . . . may also be made-

(i) when so directed by a court preliminarily to or in connection with a judicial proceeding; or

(ii) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury.

Fed.R.Crim.P. 6(e)(3)(A), (C).

The District of Columbia Circuit held in American Friends Service Committee supra, that Archives personnel do not meet any of these exceptions for the purpose of inspection. 720 F.2d at 72. However, Rule 6(e) does not prohibit the FBI from transferring grand jury materials to the Archives provided disclosure to the Archives personnel or any other person is not allowed, except as provided by Rule 6(e).

2. Title III Materials

Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2520, authorizes the use of electronic surveillance in the investigation of certain serious offenses specified in 18 U.S.C. § 2516. The use and disclosure of materials obtained pursuant to Title III is governed by 18 U.S.C. § 2517. In pertinent part, Section 2517 provides:

(1) Any investigative or law enforcement officer, who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire or oral communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of his official duties. [emphasis added]

Section 2517 "must * * * be read in light of section 2518." S. Rep. No. 1097, 90th Cong., 2d Sess., reprinted in [1968] U.S. Code Cong. & Ad. News 2112, 2188. A comprehensive system of procedures for judicial control of electronic surveillance is established by 18 U.S.C. 2518. Of particular relevance here are the procedures set forth in subsection (8) (a) which, in pertinent part, provide that electronic surveillance

recordings shall be made available to the judge issuing [the order that authorized the surveillance] and sealed under his directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections (1) and (2) of section 2517 of this chapter for investigations. [emphasis added]

Subsection (8)(c) of Section 2518 further provides that any violation of the provisions of subsection (8) "may be punished as contempt of the issuing or denying judge."

Thus, Title III's primary restriction is to disclosure. Under the proposed amendment, the FBI retains legal custody and does not permit disclosure other than as provided by 18 U.S.C. § 2517. The FBI is also requiring that storage of such materials be maintained pursuant to FBI guidelines and that such facilities be subject to periodic inspection by the FBI to ensure that secure warehousing is maintained.

2. Tax Returns and Tax Return Information

26 U.S.C. § 6103 forbids disclosure of tax returns or documents that contain "return information" by any federal employee or officer except as allowed by the comprehensive provisions of the Section. Section 6103 provides, in pertinent part:

(a) General Rule. -- Returns and return information shall be confidential, and except as authorized by this title --

(1) no officer or employee of the United States,

* * * *

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes

of this subsection, the term "officer or employee" includes a former officer or employee.

(b) Definitions. -- For purposes of this section --

(1) Return. -- The term "return" means any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf, of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

(2) Return information. -- The term "return information" means --

(A) a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over-assessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense * * *.

While disclosure of tax returns and return information is restricted, Section 6103(n) permits the Archives or any person to warehouse or store such materials. Section 6103(n) states:

Pursuant to regulations prescribed by the Secretary, returns and return information may be disclosed to any person, including any

person described in section 7513(a), to the extent necessary in connection with the processing, storage, transmission, and reproduction of such returns and return information, and the programming, maintenance, repair, testing, and procurement of equipment, for purposes of tax administration.

The Archives currently stores tax returns and tax return information for the IRS at the Archives' records center. See 44 U.S.C. §§ 2907, 3103; American Friends Service Committee, 720 F.2d at 71. Thus, while NARA does not have access to such materials for disclosure purposes, it does have authority to warehouse them.

Under the proposed restrictions which are permitted pursuant to 44 U.S.C. § 3103 3/ and 36 C.F.R. 12128.162, 4/ the FBI

³ 44 U.S.C. § 3103 provides:

When the head of a Federal agency determines that it may effect substantial economies or increased operating efficiency, he shall provide for appropriate storage, processing, and servicing of records in a records center maintained and operated by the Administrator of General Services or, when approved by him, in a center maintained and operated by the head of the Federal agency.

⁴ 36 C.F.R. 12128.162 provides in pertinent part:

Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with 44 U.S.C. 3103 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record. The Archivist of the United States will not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with existing laws. (emphasis added).

will transfer grand jury materials, Title III materials and tax returns and tax return information in sealed enclosures. The FBI will retain legal custody. NARA will not have any access to such materials. Under Section 5133(n), in warehousing tax returns and tax return information, for purposes of storing such materials, the Archives actually looks at the materials. Under the instant proposal, the Archives will not look at or otherwise inspect these three types of records.

The proposed handling of these three statutorily restricted types of records does not violate any provisions of the relevant statutes which govern them. This proposal enables the Archives to retain records which it has determined to be of permanent value. Thus, NARA will have met its archival administration responsibilities, 44 U.S.C. §§ 2101-2114, which the D.C. Circuit has indicated that Archives still must meet with respect to these records. American Friends Service Committee, 720 F.2d at 76-77. If, in the future, there is an amendment to the records acts which permits Archives access to such materials or amendment to one or more of the three relevant statutes which would permit such disclosure, Archives has the records available to incorporate them with classifications from which they were segregated.

This proposal also moves the FBI much closer to the day it can be alleviated from the enormous administrative burden of storing FBI documents for which it no longer has any need to maintain. As the statutory restrictions for these three materials do not preclude Archives from storing such materials and the disclosure restrictions as to these materials are not violated, the NARA and FBI proposal is permissible.

Basis for Storage

§ 1228.156

intended for inclusion in these folders, or pay records.

(c) Agencies should make every effort to locate all documents required to be in the folder and file them before the folder is transferred to the National Personnel Records Center. Loose papers being prepared for transfer to the National Personnel Records Center for inclusion in official personnel folders previously sent to the records center must be thoroughly screened by the transferring agency of all temporary material, as defined in the Federal Personnel Manual. Only those papers specifically prescribed in the Federal Personnel Manual for permanent inclusion in each individual's folder should be forwarded. Each document must show the following identifying information: Current name and the name under which formerly employed (if different), date of birth and social security number, and date of separation. The transmittal should clearly identify the agency personnel office and address.

(d) Transfer of fiscal records shall be in accordance with the procedures outlined in § 1228.152.

(e) Standard Form 127, Request for Official Personnel Folder (Separated Employee), shall be used by agencies in requesting transmission of personnel records of separated employees from the National Personnel Records Center. Use of this form ensures prompt transmission of the desired folders. It should be submitted to the National Personnel Records Center in duplicate.

§ 1228.156 Transferring vital records to Federal records centers.

NARA provides for the storage and protection of rights and interests vital records under the dispersed concept as described in Part 1236. The facilities of all NARA Federal records centers (FRC) without regard to geographical location are now available for agencies desiring to store these records. Each NARA Federal records center has areas with suitable temperature and humidity controls allowing the safe storage of paper records, magnetic tape, and photographic film. Agencies may make arrangements through the National Archives (NC), Washington,

36 CFR Ch. XII (7-1-85 Edition)

DC 20408, for the transfer of indispensable vital records to these depositories and for their use.

§ 1228.160 Release of equipment.

File equipment received with the transfer of records to a Federal records center will normally be disposed of in accordance with applicable excess personal property regulations. An agency desiring return of the equipment should make this request before transfer of the records to the records center.

§ 1228.162 Use of records in Federal records centers.

Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with 44 U.S.C. 3103 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record. The Archivist of the United States will not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with existing laws.

(a) Standard Form 180, Request Pertaining to Military Records, shall be used by Federal agencies to obtain information from military service records in the National Personnel Records Center (Military Personnel Records). Agencies may furnish copies of that form to the public to aid in inquiries and may direct non-Government organizations to the Superintendent of Documents to purchase quantities of the form.

(b) Requests for official civilian personnel files shall be made in accordance with § 1228.154.

(c) For any other requests, agencies should use Optional Form 11, Reference Request—Federal Records Centers, or a form jointly designated by that agency and NARA.

§ 1228.164 Disposal clearances for records in Federal records centers.

(a) Records at the National Personnel Records Center covered by General Records Schedules 1 and 2 will be destroyed in accordance with those

National Arch

schedules with clearance.

(b) Contingent Federal agency construction after at some uns future) held b ters will be dis agency concurr Form 1300, Agent Disposal, rence. If the ag the review not days, the reco the records to future transfer

(c) Other reco held by Federa disposed of wi the agency co Form 1301, No stroy Records, currence for ea agency is notif its records for fails to respo within 90 cal will be dispose the appropriat

(45 FR 5705, Jan FR 6371, Feb. 21 18, 1984. Redesi FR 15723, 15725.

Subpart I—Tra Natic

§ 1228.180. Auth

(a) Transfer vist of the Uni by 44 U.S.C. 21

(1) Accept f tional Archive: the records of the Congress d vist of the Unit cient historical rant their con the U.S. Govern

(2) Direct an the National States of Fede have been in e 30 years and mined by the States to have other value to preservation b

DRAFT

[redacted]
Assistant Archivist for Presidential Libraries and
Director, FBI Appraisal Task Force
National Archives and Records Administration
Washington, D. C. 20408

b6
b7c

Dear [redacted]:

I am writing you in an effort to establish the disposition of a collection of material accumulated during a series of intensive inquiries and investigations conducted by the Civil Rights Division and the Criminal Division of the Department of Justice over a ten-year period. The material pertains to investigative techniques and includes the files employed in obtaining an indictment of former officials of the Federal Bureau of Investigation (FBI). We at the Department of Justice have recognized the historical potential of this material and our evaluation has been verified by Mr. Henry Wolfinger, appraiser from the National Archives and Records Administration. I have also consulted with SA Robert W. Scherrer, Section Chief and FBI Records Officer, since much of the material is contained in FBI files, and he recommended that I contact you for guidance.

My primary concerns rest with the protection of sensitive and classified material and keeping this file collection intact. My intention is to offer the record collection to the National Archives after the retention period of 50 years has elapsed to coincide with the authorities contained in the FBI records disposition schedule and the transfer of the original FBI documents. During the interim period, it would be most desirable to obtain secure storage space at the Washington National Records Center facility in Suitland, MD, to maintain the collection, which consists of approximately 300 cubic feet. Subsequent transfer to the National Archives would be accomplished directly from the records center. I am aware of the premium value placed on storage space, particularly on short notice; however, it will be several months before the necessary reviews are conducted and the collection is ready for storage.

I have attached the appropriate number of copies of SF 115 to initiate the offer of this record collection. I will look forward to receiving any guidance you might offer or any referral you might suggest.

Greenberg/Gray-7526

REQUEST FOR RECORDS DISPOSITION AUTHORITY
(See Instructions on reverse)

LEAVE BLANK

JOB NO.

DATE RECEIVED

TO: GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE, WASHINGTON, DC 20408

1. FROM (Agency or establishment)

NOTIFICATION TO AGENCY

2. MAJOR SUBDIVISION

In accordance with the provisions of 44 U.S.C. 3303a the disposal request, including amendments, is approved except for items that may be marked "disposition not approved" or "withdrawn" in column 10. If no records are proposed for disposal, the signature of the Archivist is not required.

3. MINOR SUBDIVISION

4. NAME OF PERSON WITH WHOM TO CONFER

5. TELEPHONE EXT.

DATE

ARCHIVIST OF THE UNITED STATES

6. CERTIFICATE OF AGENCY REPRESENTATIVE

I hereby certify that I am authorized to act for this agency in matters pertaining to the disposal of the agency's records; that the records proposed for disposal in this Request of _____ page(s) are not now needed for the business of this agency or will not be needed after the retention periods specified; and that written concurrence from the General Accounting Office, if required under the provisions of Title 8 of the GAO Manual for Guidance of Federal Agencies, is attached.

A. GAO concurrence: ☐ is attached; or ☐ is unnecessary.

B. DATE

C. SIGNATURE OF AGENCY REPRESENTATIVE

D. TITLE

7.
ITEM
NO.

8. DESCRIPTION OF ITEM
(With Inclusive Dates or Retention Periods)

9. GRS OR
SUPERSEDED
JOB
CITATION

10. ACTION
TAKEN
(NARS USE
ONLY)

1. Files and records of the Criminal Division and Civil Rights Division of the United States Department of Justice which culminated in criminal proceedings and encompassed a period of 10 years. The material consists of approximately 300 cubic feet of investigative and court records dated from the early 1970s, which are the products of Federal investigative agencies compiled for law enforcement purposes.

PERMANENT. Offer to the National Archives when 50 years old.

DRAFT

ALL FBI INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs

Greenberg/Gray-7527

MEMORANDUM

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-12-2009 BY 65179 dmh/baw/sbs



Exec AD Adm. *[Signature]*
Exec AD Inv. *[Signature]*
Exec AD LES *[Signature]*
Asst. Dir.:
Adm. Servs. *[Signature]*
Crim. Inv. *[Signature]*
Ident. *[Signature]*
Insp. *[Signature]*
Intell. *[Signature]*
Lab. *[Signature]*
Legal Couns. *[Signature]*
Off. Cong. & Public Affs. *[Signature]*
OLIA *[Signature]*
Rec. Mgnt. *[Signature]*
Tech. Servs. *[Signature]*
Training *[Signature]*
Telephone Rm. *[Signature]*
Director's Sec'y *[Signature]*

To : MR. MCCREIGHT *[Signature]*

Date 8-21-1987

From : Joseph L. Tierney *[Signature]*

Subject : SUPREME COURT NOMINATION OF ROBERT H. BORK;
PROSECUTION OF MARK FELT AND E.S. MILLER

I was contacted yesterday by Frank Martin, DOJ, who is assisting in staffing the nomination of Mr. Bork and who was one of the Departmental attorneys in the prosecution of Felt and Miller.

The Department has received a press inquiry based upon a 1978 news story reporting on remarks made by Miller's attorney that Messrs. Ruckelshaus, Kelley and Bork were familiar with the surreptitious entries involved in the prosecution. The remarks quoted were in support of an argument the statute of limitations barred the prosecution, a position later abandoned by the defense. Miller's attorney submitted 10 documents in support of his argument to the court at the time.

In July, 1973, Ruckelshaus wrote to Kelley listing 11 issues he thought should be pursued by the newly-appointed Director. The 7th issue was investigative techniques "from the clearly legal to the clearly illegal". In December, 1973, Acting Attorney General Bork wrote to Mr. Kelley expressing his interest in pursuing these issues. There was considerable drafting of positions and debate within FBIHQ on how to respond to these issues, some easily handled, but the most troublesome being the one on investigative techniques. The documents available in this package and my personal recollection of what we were able to learn during the discovery process before the trial of Felt and Miller is that a final position or briefing cannot be said to have occurred. In the May-July, 1974 time frame it appears there were plans to brief AG Saxbe orally and to furnish for the record a non-specific response to the question.

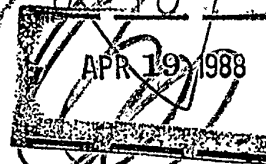
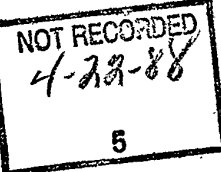
Enclosure

- 1 - Mr. Otto
- 1 - Mr. Revell
- 1 - Mr. Glover
- 1 - Mr. Ahlerich
- 1 - Mr. McCreight
- 1 - Mr. Clarke
- 1 - 77A-140555
- 1 - 62-118045 (FELT & MILLER)

b6
b7C

JLT:jtf (9)

CONTINUED OVER



139 APR 25 1988

Greenberg/Gray-7528

ORIGINAL FILED IN 62-118045-118

Memo Joseph L. Tierney to Mr. McCreight dated 8-21-87
Re: Supreme Court Nomination of Robert H. Bork
Prosecution of Mark Felt and E.S. Miller

The Department's only request of the Bureau is for a classification review of these documents. They contacted me directly because of my past familiarity in collecting the documents. They are trying to be in a position to release the documents in an unclassified state to the press.

Attached is a copy of an article which appeared in the Boston Globe on 8-21-87 concerning this matter.

RECOMMENDATION:

None. For information and record purposes.

APPROVED:	Adm. Svcs. _____	Off of Cong. _____
	Crim. Inv. _____	& Public Affs. _____
	Ident. _____	Off of Lia. _____
Director <i>AS</i>	Inspection _____	& Intl Affs. _____
Exec. AD-Adm. <i>AS</i>	Intell. _____	Rec. Mgmt. <i>AKM</i>
Exec. AD-Inv. _____	Laboratory _____	Tech. Svcs. _____
Exec. AD-LES _____	Legal Coun. <i>SE/AL</i>	Training _____

SES

Memo supposes Bork on FBI break-in charge

By Stephen Kurkjian
Globe Staff

A federal court judge in Washington late yesterday granted a Justice Department request to unseal a list of government documents, including one that appears to exonerate Robert H. Bork of a 1973 charge that he knew of illegal break-ins by FBI agents and did not try to stop them.

The Senate Judiciary Committee, which begins hearings next month on Bork's nomination as Supreme Court justice, had asked the Justice Department to provide the documents based on the statements made by a defense counsel in a 1978 case.

At a pretrial hearing in that case, the lawyer, Thomas Kennelly, asked that indictments against his client, one of three FBI officials charged in connection with the illegal break-ins, be dropped because top government officials at the time knew of their activities in 1973 and did nothing to investigate them.

In introducing the documents in 1978, Kennelly, according to a transcript of the hearing, stated: "I submit they show beyond the peradventure of a doubt that Mr. Ruckelshaus, Mr. Bork, the attorney general of the United States; Director Kelley, director of the FBI, the liaison deputy associate attorney general of the United States and other officials of the highest levels of the Department of Justice and the FBI knew or certainly had notice of the existence of surreptitious entries, the type alleged in this indictment, as early as 1973, and they did nothing about it."

William D. Ruckelshaus was deputy attorney general under Elliot Richardson until November 1973, when Bork replaced Richardson as attorney general after Richardson refused to dismiss Archibald Cox, the special Watergate prosecutor. Clarence Kelley was director of the Federal Bureau of Investigation.

Francis J. Martin, a Justice Department

official who prosecuted the case against the FBI officials, said last night that after reviewing the documents during the past two days he believed that Kennelly "may have been engaging in a little bit of hyperbole."

Kennelly, in an interview earlier in the day, said he did not recall making the statements, but added: "If I had documents to submit, I suspect there had to be something behind what I was saying and not just courtroom advocacy."

Yesterday, US District Judge William F. Bryant approved a Justice Department motion to lift the seal on the list of documents which had been secured because they contained classified information. The documents themselves will soon be turned over to the Judiciary Committee.

Having reviewed the documents recently, Martin said the only one that related to Bork's alleged knowledge was a memorandum written by Bork, as acting attorney general, to Kelley on Dec. 5, 1973. In the memo, Bork reminded Kelley of an inquiry being conducted by the department into investigative techniques used by the FBI.

Bork then wrote: "I ask that you report on these matters as expeditiously as possible and that your report include a detailed summary of conduct in the past under such programs and actions taken to insure that the rights of individuals are not violated while essential FBI investigations are pursued."

Bork was replaced by the head of the Justice Department the next month and according to Martin's reading of the documents submitted in the FBI case, never received any response from Kelley.

Two of the three FBI officials, Edward Miller and W. Mark Felt, were convicted in 1980 of approving the series of break-ins. They were later pardoned by President Reagan. Charges against the third, L. Patrick Gray, the head of the FBI at the time, were dropped.

Nominee's net worth put at just under \$1 million

Associated Press

WASHINGTON — Supreme Court nominee Judge Robert H. Bork's net worth is nearly \$1 million, documents filed with the Senate Judiciary Committee show.

The documents, filed by Bork earlier this month as part of a lengthy response to a Senate questionnaire, listed Bork's total assets as nearly \$1.2 million and a

debt of \$205,000 for a net worth of \$980,000.

The bulk of Bork's worth is represented by the market value of his Washington home (\$569,000), and a \$500,000 pension plan. The \$205,000 debt is a mortgage on Bork's home.

If confirmed by the Senate, Bork apparently would be one of the wealthiest high court members.

62-118042-1000

Greenberg/Gray-7530

FEDERAL BUREAU OF INVESTIGATION
FOIPA
DELETED PAGE INFORMATION SHEET

No Duplication Fees are charged for Deleted Page Information Sheet(s).

Total Deleted Page(s) ~ 43

Page 24 ~

Sealed per court order

Page 25 ~

Sealed pursuant to court order

Page 26 ~

Sealed pursuant to court order

Page 27 ~

Sealed pursuant to court order

Page 28 ~

Sealed pursuant to court order

Page 43 ~ Referral/Direct

Page 52 ~ Duplicate

Page 53 ~ Duplicate

Page 54 ~ Duplicate

Page 55 ~ Duplicate

Page 56 ~ Duplicate

Page 57 ~ Duplicate

Page 58 ~ Duplicate

Page 59 ~ Duplicate

Page 89 ~ Duplicate

Page 90 ~ Duplicate

Page 91 ~ Duplicate

Page 92 ~ Duplicate

Page 93 ~ Duplicate

Page 94 ~ Duplicate

Page 95 ~ Duplicate

Page 96 ~ Duplicate

Page 97 ~ Duplicate

Page 98 ~ Duplicate

Page 99 ~ Duplicate

Page 100 ~ Duplicate

Page 101 ~ Duplicate

Page 102 ~ Duplicate

Page 103 ~ Duplicate

Page 104 ~ Duplicate

Page 159 ~ b6, b7C, b7D

Page 161 ~ b6, b7C, b7D

Page 162 ~ b6, b7C, b7D

Page 163 ~ b6, b7C, b7D

Page 164 ~ b6, b7C, b7D

Page 165 ~ b6, b7C, b7D

Page 166 ~ b6, b7C, b7D

Page 167 ~ b6, b7C, b7D

Page 168 ~ b6, b7C, b7D

Page 169 ~ b6, b7C, b7D

Page 170 ~ b6, b7C, b7D

Page 171 ~ b6, b7C, b7D

Page 172 ~ b6, b7C, b7D